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OVERSEAS DEPENDENT TERRITORIES AND CROWN DEPENDENCIES OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[20 January 2001]

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Introduction

1. In accordance with the consolidated guidelines for the initial part of the reports of States Parties (HRI/1991/1) which was transmitted under cover of the Secretary-General's Note dated 26 April 1991 (HRI/CORE/1), the Government of the United Kingdom submits, annexed herewith, the core document (the "country profile") in respect of:

(i) Each of its Dependent Territories overseas to which one or more of the various United Nations human rights treaties applies, that is to say, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena and the Turks and Caicos Islands (annexes I-X).

(ii) Each of its Crown Dependencies to which one or more of those treaties applies, that is to say, the Isle of Man, Guernsey and Jersey (annexes XI-XIII).

2. Appendices referred to in the annexes are available for consultation in the secretariat.

Annex I

ANGUILLA

I. LAND AND PEOPLE

1. The resident population of Anguilla grew by 13.4 per cent from 6,680 in 1984 to 8,960 in 1992, both census years. The 1992 figure comprised 4,473 males and 4,487 females. Sixty-eight per cent of the population were persons aged 35 years or under. The population density was recorded at 106 per square kilometre (276 per square mile). Just under 15 per cent of the population counted comprised nationals of other Caribbean countries and under 10 per cent comprised expatriates from the United Kingdom, the United States and elsewhere. Other statistical information shows the following:

Per capita income	EC$ 16,400	(1992)
Gross domestic product	EC$m 152.57	(1992)
Rate of inflation	2 per cent	(1992)
External debt (EC$m)	23.6	(1992)
Rate of unemployment	7 per cent	(1992)
Adult literacy rate	92 per cent	(1992)
Percentage of population speaking English as mother tongue	Not available, but assumed to be 100 per cent. This does not include a number of Spanish and French nationals who reside on the island.	
Life expectancy		
Males	68 years	(1992)
Females	69 years	(1992)
Infant mortality rate (per 1,000)	28.4	(1992)
Maternal mortality rate	Not available	
Fertility rate	1.79	(1992)
Percentage of population		
Under 15	30.5 per cent	(1992)
65 and over	9.0 per cent	(1992)
De jure population		
Resident	8 960	(1992)
Off-Island (for less than 3 months)	330	(1992)
Total	9 290	

Percentage of population in rural and urban areas	There is an absence of a clearly identifiable urban area in Anguilla although certain places are more densely settled than others.
Percentage of households headed by women	Not available. Assumed to be less than 15 per cent.
Religions	The principal denominations are Anglican, Methodist, Seventh-Day Adventist, Baptist, Catholic and Church of God of Prophecy.

II. GENERAL POLITICAL STRUCTURE

A. System of government

2. Prior to Associated Statehood, Anguilla was governed as part of the colony of St. Kitts-Nevis-Anguilla. There were petitions against this union in 1825, 1872 and 1958. The protests reached a climax when the three islands became an Associated State in February 19[illegible] with responsibility for internal affairs vested in the Central Government in St. Kitts.

3. In May that year Anguilla rebelled and took over its own affairs. British police occupied the island in 1969 and a senior British official was appointed to help administer it. In 1971, the United Kingdom Parliament passed the Anguilla (Administration) Act under which a Commissioner was appointed to be responsible for the direct administration of the island, working in close consultation and cooperation with an elected Council.

4. In 1976 a new Constitution established a ministerial system of government in Anguilla and provided for the administration of the island which, however, still retained its legal ties with St. Kitts-Nevis.

5. In December 1980, with the passage of the Anguilla Bill by the United Kingdom Parliament, the island was formally separated from the rest of the Associated State and resumed the status of a dependent territory.

6. The Constitution of Anguilla is now contained in the Schedule to the Anguilla Constitution Order 1982, as amended by the Anguilla Constitution (Amendment) Order 1990. (Copies of these two instruments are attached as appendices 1 and 2.) It provides for a "Westminster style" form of parliamentary government, with a Governor (representing the Crown), an Executive Council (corresponding to the Cabinet) and a largely elected legislature, the House of Assembly, from which the Executive Council is drawn and to which it is in principle responsible.

7. The Governor is appointed by the Queen on the advice of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom to whom he is responsible for the exercise of those of his functions which the law does not require him to exercise on the advice of

some other authority. He presides over the Executive Council, which he is, in general, required to consult and on whose advice he is then required to act. But he retains direct responsibility for (and is not required to consult the Executive Council on) certain matters, notably defence, external affairs, offshore finance, internal security (including the police) and the public service. He also has reserved legislative powers, under the authority of the Secretary of State, to procure the passage through the Legislative Council of laws which he considers are required in the interests of public order or public faith. He is empowered to delegate some of his responsibilities to the Deputy Governor.

8. The Executive Council comprises the Governor, the Chief Minister and three other Ministers, and also the Deputy Governor and the Attorney-General as ex officio members.

9. The House of Assembly consists of 12 members: the Speaker; the Deputy Governor and the Attorney-General as the two ex officio members; seven elected members; and two nominated members.

The powers of the House of Assembly

10. Subject to the provisions of the Constitution and to the Governor's approval, the Assembly regulates its own proceedings. It may make laws on any subject, which it does in the form of bills which, having been passed by the Assembly, are presented to the Governor for his assent. When assented to they become ordinances. Though the Governor has the power to refer a bill back to the Assembly for it to consider any amendment which he may recommend, in general he exercises his power of assent in accordance with the advice of the Executive Council, and in practice most bills are government bills, drafted in the Attorney-General's Chambers and approved by the Executive Council before being introduced in the Assembly. Formally, all ordinances are subject to disallowance by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the right to legislate for Anguilla by Act of Parliament or by Order in Council.

Parliamentary sessions

11. The maximum life of the House of Assembly is fixed at five years. But the Governor may dissolve it earlier, after consultation with the Chief Minister, thus paving the way for a general election before the expiry of its maximum period. A general election must be held within two months of a dissolution. There must be at least one session of the Assembly in every year. Prorogation, which is the way in which a session is terminated when the Assembly is not being dissolved, is effected by the Governor acting in accordance with the Chief Minister's advice.

Parliamentary elections

12. Anguilla is divided into seven electoral districts for the purposes of a general election.

13. The legal framework for the conduct of elections is provided for in the Constitution and in supporting legislation, principally the Constitution and Elections Ordinance (Cap. 162) and the Anguilla Council Elections Ordinance 1972.

14. Under the Constitution a person is qualified for election as a member of the Assembly if, being a person who "belongs to Anguilla" (a term which is defined in the Constitution), he is registered as a voter in Anguilla and either was born in Anguilla and is domiciled on the island at the date of his nomination for election or has resided in Anguilla for three years immediately before the date of his nomination for election and is domiciled on the island at that date and is the son or daughter of parents one of whom was born in Anguilla.

15. Certain persons, though otherwise qualified in accordance with paragraph 14 above, are expressly disqualified by the Constitution from membership of the Assembly. These include persons who are ministers of religion (defined in the Constitution), or who have been declared bankrupt, or who are certified to be insane or otherwise of unsound mind, or who are under death sentence or who have been sentenced to more than 12 months' imprisonment for some offence, or who have committed certain offences connected with elections.

16. The Constitution also sets out the qualifications for voters. A person who is at least 18 years old and is resident in the electoral district in which he seeks to be registered as a voter is qualified to be so registered if either he is a British Dependent Territories citizen who was born in and is currently domiciled in Anguilla or he is a person who "belongs to Anguilla" and who has certain specified residence and/or family connections with Anguilla. There are certain disqualifications for registration as a voter which are broadly similar to those relating to membership of the House of Assembly (see para. 15 above).

17. There is a voter enumeration every four years. In between, the register of voters is updated annually.

The party system

18. When Anguilla sought self-determination in 1967 the idea then prevalent was that it would be unwise to form political parties as this would bring about divisions among the people at a time when they needed to be united. However, over the years a number of parties came into existence. Accordingly, whenever there is a general election (or a by-election) the parties present their candidates and outline their plans for the island. In some cases there may be independent candidates. The candidate in each electoral district who wins the most votes on polling day is elected and is later sworn in as a member of the House of Assembly.

19. The last general election, in March 1994, produced an inconclusive result, with the Anguilla National Alliance (ANA), the Anguilla United Party (AUP) and the Anguilla Democratic Party (ADP) all winning two seats each. The seventh seat was won by an independent candidate. The AUP and the ADP then formed a coalition which became the new Government on 18 March.

Government and opposition

20. The Governor appoints as Chief Minister (i.e. the head of the Government) the elected member of the House of Assembly whom he judges to be likely to command the support of a majority of the elected members of the Assembly. As a rule, this is the leader of the party which won the most seats in the most recent general election, and his party therefore forms the

Government. But there may be cases, as noted above, where the Chief Minister is the leader of a party which forms a coalition with others to form the Government. The leader of the party which holds the next largest number of seats in the Assembly outside the Government is appointed as the official Leader of the Opposition. He and those elected in his party join other opposition members on the opposite side to the Government in the House of Assembly.

21. Equal time is allowed to both sides of the Assembly to state and defend their views on any matter of public interest, thus ensuring the democratic process. The proceedings of the Assembly are open to public attendance, and are also broadcast live on the Government's radio station, to give the public an opportunity to listen to the debates.

B. The law

The courts

22. The courts structure in Anguilla consists of a Magistrate's Court, a High Court, a Court of Appeal and the Judicial Committee of the Privy Council. The High Court and the Court of Appeal are in fact the courts which together constitute the Eastern Caribbean Supreme Court. This Court and its judges serve not only Anguilla but also a number of independent countries in the Eastern Caribbean and a number of other British dependent territories in the region. (At present they visit Anguilla periodically for their sittings but the Eastern Caribbean Supreme Court is considering the appointment of a judge to be shared on a permanent basis by Anguilla and Montserrat.) There are elaborate provisions, which form part of the law of all the countries and territories concerned, regulating the appointment and tenure of office of the judges and ensuring that they are protected from political interference from any source. So far as concerns the Magistrate and the holders of other subordinate judicial or quasi-judicial offices in Anguilla (e.g. the local Registrar of the High Court), the Constitution of Anguilla requires the Governor, in exercising his powers of appointment, etc., to consult with the Judicial Services Commission, which is itself established by the Constitution and which consists of the Chief Justice of the Eastern Caribbean Supreme Court, another judge of that Court and the Chairman of the Public Service Commission.

Criminal proceedings

23. The responsibility for initiating criminal proceedings in Anguilla is generally exercised by the police who will, however, refer matters which might involve some difficulty to the Attorney-General's Chambers for guidance or for the Attorney-General to take over. In some cases the Attorney-General may himself initiate proceedings. Section 34 (1) of the Anguilla Constitution empowers him to institute and undertake criminal proceedings against any person for an offence against the law of Anguilla; to take over and continue criminal proceedings instituted by any other person or authority; and to discontinue such proceedings at any stage before judgement is delivered.

24. There are three categories of criminal offences in Anguilla: those triable only on indictment (that is, before a judge and jury); those triable summarily only; and those triable either way (that is, either on indictment or summarily).

25. Very serious offences, such as murder, manslaughter and rape, are triable only on indictment. The least serious offences, known as summary offences, are tried by the Magistrate who sits without a jury. The offences triable either way can be tried either by the Magistrate or by a judge sitting with a jury, depending on the circumstances of the case, the election of the defendant and the agreement of the prosecution.

26. In addition to trying summary offences (and offences triable either way which it has been decided should be tried summarily), the Magistrate also sits as a court of preliminary inquiry for the purpose of deciding whether there are sufficient grounds for committing an accused person to the High Court for trial on indictment. Where the Magistrate has convicted, after summary trial, a person charged with an offence triable either way, he may, if he thinks that a more severe penalty is called for than he has power to impose, commit that person to the High Court for sentence.

27. The Magistrate usually sits in open court to which the public and the media are admitted.

28. Cases involving persons under 16 years of age are usually heard in the Juvenile Court. This is a specially constituted Magistrate's Court which is held at a different time. Only limited categories of people may be present.

Appeals in criminal proceedings

29. Persons convicted in the Magistrate's Court or the High Court may appeal to the Court of Appeal against the sentence imposed if they pleaded guilty, or against the conviction or sentence imposed if they pleaded not guilty. In some cases a further appeal may lie to the Judicial Committee of the Privy Council, either as of right or with the leave of the Court of Appeal. It is always possible for the Judicial Committee to grant special leave to appeal.

Trials

30. As is usual in Common Law systems, criminal trials are adversarial in nature. An accused person is presumed innocent until proved guilty and the prosecution must prove his guilt beyond reasonable doubt. The rights of accused persons to a fair trial, with all the necessary procedural and other safeguards, are guaranteed by section 9 of the Constitution of Anguilla, which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights. Section 3 of the Constitution sets out the safeguards for persons in custody and specifically for those detained in connection with possible criminal proceedings. (For the machinery for enforcing these provisions, see para. 40 below.) Though there is no formal legal aid programme in Anguilla, it is customary in serious criminal cases, such as murder or manslaughter, for the court to appoint an attorney-at-law, paid for out of public funds, to represent the accused person if he would otherwise be unrepresented.

Juries

31. In trials by judge and jury, the judge decides questions of law, sums up the evidence for the jury, instructs the jury on the relevant law, and either discharges the accused or passes sentence in accordance with the jury's verdict. The jury is the sole arbiter of facts and decides

whether the prosecution has proved beyond reasonable doubt that the defendant is guilty. If not, the jury must find him not guilty. Where a jury cannot reach a unanimous verdict, it may be directed by the judge to bring in a majority verdict.

32. In general, persons between the ages of 21 and 60 years who are qualified to vote are eligible for jury service. Some particular categories of persons are not eligible. These include priests and members of the legal profession.

Coroner's courts

33. In Anguilla the Magistrate is the Coroner for the island. Violent or unnatural deaths, and sudden deaths where the cause is unknown, are investigated by the Coroner. In some, but not all, cases the Coroner must summon a jury to assist him.

Civil proceedings

34. Civil proceedings take place either in the Magistrate's Court or in the High Court. The Magistrate's Court has a limited civil jurisdiction embracing disputes where the amount in dispute does not exceed $15,000 and also certain matrimonial matters, such as custody and maintenance orders. Most other civil proceedings are heard in the High Court.

Appeals in civil proceedings

35. An appeal may lie in civil proceedings from the Magistrate's Court or the High Court to the Court of Appeal. A further appeal may lie from the Court of Appeal to the Judicial Committee of the Privy Council, either as of right or with the leave of the Court of Appeal. It is always possible for the Judicial Committee to grant special leave to appeal.

Administrative tribunals

36. Administrative tribunals are set up under various statutory powers, e.g. under the Labour Department Ordinance. These tribunals exercise judicial functions separate from the ordinary courts. Their advantage is that they are more accessible, less formal and less expensive than the courts and they also have the benefit of expert knowledge in their particular fields of expertise. They are of course subject to the control of the courts, e.g. if they exceed their powers or fail to observe the rules of natural justice.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

37. The basic means of protecting and enforcing human rights in Anguilla - in addition, that is, to the pressure of public opinion through the democratic process - is by invoking the relevant domestic law and the ordinary courts system, which, as explained above, is independent and impartial and is protected from political interference.

38. Under the Common Law system which operates in Anguilla, treaties which apply to Anguilla (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation - this could be by an ordinance enacted locally or by an Order in Council made by the United Kingdom Government - or to amend existing legislation or to adapt administrative practices, as the case may require. Where this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation, or, in some cases, by criminal sanctions.

39. However, and over and above this, the Constitution of Anguilla does contain, in its chapter I (sects. 1-18), a fully elaborated set of provisions for the protection of the fundamental rights and freedoms of the individual. These provisions, which define in detail the rights concerned and the permissible limitations that may be imposed on them, derive directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. In times of emergency (as defined in the Constitution) the law may authorize measures to be taken which derogate from certain of the rights protected but only if those measures are reasonably justifiable for dealing with the situation then existing, a question which can ultimately be determined by the courts.

40. Section 16 of the Constitution provides that if any person alleges that any of the substantive provisions of chapter I has been, or is being, contravened in relation to him or to another person who is being detained, then, without prejudice to any other remedy that is lawfully available to him, he may apply to the High Court for redress. On such an application, the High Court may make such orders, issue such writs and give such directions as it may consider appropriate for enforcing the rights, under chapter I, of the person concerned. Moreover, if a question as to the contravention of any of the provisions of chapter I arises in any subordinate court, that court may (and must if any party so requests) refer it for determination by the High Court and must then dispose of the case in accordance with that determination. An appeal lies as of right to the Court of Appeal and thence to the Judicial Committee of the Privy Council from any decision of the High Court under chapter I.

41. It is to be noted that, as section 16 of the Constitution makes clear, these safeguards for the protection of human rights that are provided by the Constitution are in addition to the remedies that may exist in the ordinary law, e.g. an action for wrongful arrest or false imprisonment or a prosecution, under the Police Regulations, for the unlawful or unnecessary exercise of authority by a police officer.

42. It may be added that, under section 90A of the Magistrate's Court Procedure Act (Cap. 46), a convicted person may be ordered by the court, upon application by an aggrieved person, to pay him compensation for loss or injury suffered. An award of such compensation will, however, bar the recipient from pursuing any further civil proceedings in respect of the same matter.

IV. INFORMATION AND PUBLICITY

43. The text of United Nations human rights instruments to which the United Kingdom is a party in respect of Anguilla are usually publicized when they become available on the island. The texts may be published in the Official Gazette and in sections of the local press or placed in the Library and in schools. The Government's Department of Information and Broadcasting provides publicity on various human rights matters in news or discussion programmes originating from external sources such as the United Nations Radio in New York.

44. The Anguilla Constitution which, as explained above, makes enforceable provision for the protection of the fundamental rights and freedoms of the individual as set out in the Universal Declaration of Human Rights has been made available to the public. Other relevant laws of Anguilla, as referred to above, are, of course, also accessible to the public.

Annex II

BERMUDA

I. LAND AND PEOPLE

1. Although it is customary to refer to the whole territory of Bermuda as "the Islands of Bermuda", it in fact consists of a group of approximately 138 islands and islets situated in the Atlantic Ocean some 586 miles due west of Cape Hatteras in N. Carolina. The 10 principal islands, which form a chain about 22 miles long, are very close to one another and are connected by bridges. They vary in size but the main island, which is about 14 miles long and has an average width of 1 mile, contains about 9,000 acres of land. Its highest point is only 259.4 feet above sea level. The aggregate area of all the other islands is about 4,240 acres. There are no rivers or lakes.

2. The City of Hamilton has been the capital of Bermuda since 1815. Its population is approximately 1,100. The Town of St. George was Bermuda's first capital. Its population is 1,648.

3. Bermuda is believed to have first been discovered by a Spanish navigator in about 1503 but it was completely uninhabited when it was first settled by emigrants from England, acting under the authority of a Royal Charter, in 1612. In 1684 the Charter was annulled and the government of Bermuda was assumed by the British Crown. It has remained a British dependency ever since.

4. Background statistical information, using the most up-to-date information available, is as follows:

Per capita income	$23 980 (1993)
Gross national product	$1 408.8 million (provisional 1992/93)
Rate of inflation	2.5 (1993)
External debt	$80 million (provisional 1993)
Rate of unemployment	
Males	4 per cent (1991)
Females	2 per cent (1991)
Literacy rate	N/A
Population	59 040 (1993)
Population by reference to mother tongue	The great majority of the settled population of Bermuda have English as their mother tongue. There is a small Portuguese-speaking community but their exact number is not known. There are no other linguistic minority communities.

Life expectancy	
Males	78 years (1991)
Females	70 years (1991)
Infant mortality rate	11.6 per 1 000 live births (provisional 1992)
Birth rate	15.5 per 1 000 (provisional 1992)
Mortality rate	7.9 per 1 000 population (provisional 1992)
Maternal mortality rate	N/A
Fertility rate	60 per 1 000 women aged 15-44 (1992)
Percentage of population	
under 15 years old	
Males	5.076 per cent (1991)
Females	5.699 per cent (1991)
over 65 years old	
Males	2.199 per cent (1991)
Females	3.197 per cent (1991)
Percentage of population	
Rural	0 per cent
Urban	100 per cent
Percentage of households headed by women	34 per cent (1991)

5. A copy of the Bermuda Digest of Statistics 1993, which contains a number of other useful statistics compiled and published by the Statistical Department of the Ministry of Finance of the Bermuda Government, is attached as appendix 1.

II. GENERAL POLITICAL STRUCTURE

A. System of government

Government

6. The present Constitution, which came into force on 2 June 1968, is contained in Schedule 2 to the Bermuda Constitution Order 1968 as amended from time to time. A copy of that Order in its current form is attached as appendix 2.

7. Chapter I of the Constitution, which is discussed in more detail in Part III below, contains provisions which protect the fundamental rights and freedoms of the individual. The main features of the Constitution, apart from chapter I, are as follows.

(a) The Executive

8. The Governor is appointed by the Queen on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs, to whom he is responsible. Executive authority is vested in the Governor but he is required to obtain, and act in accordance with, the advice of the Cabinet, or a Minister acting under the general authority of the Cabinet, in the exercise of all his functions except in certain specified cases. These principally concern functions involving external affairs, defence, internal security and the police (for which the Governor retains direct responsibility, though he may delegate some responsibility in these matters to a Minister) and certain other specific functions which he is empowered to exercise either in his discretion (e.g. the appointment of three members of the Senate) or in accordance with the advice of, or after consultation with, or on the recommendation of, some other person or authority (e.g. the appointment of judges).

9. The Cabinet consists of a Premier and not less than six other Ministers. The Premier is the member of the House of Assembly who appears to the Governor to be the best able to command the confidence of a majority of its members. The other Ministers are appointed by the Governor, in accordance with the advice of the Premier: at least one but not more than two of them must be appointed from among the members of the Senate and the remainder from among the members of the House of Assembly. The Governor, acting in accordance with the Premier's advice, may also appoint Parliamentary Secretaries (to assist Ministers) from among the members of the Senate and the House of Assembly, but there may not be more than 12 Ministers and Parliamentary Secretaries appointed from among the members of the House of Assembly.

10. The Cabinet is collectively responsible to the Legislature for any advice which it gives to the Governor or which is given to him under its general authority and for all things done by a Minister in the execution of his office. If the House of Assembly passes, by an affirmative majority of all its members, a resolution of no confidence in the Government, the Governor must either dismiss the Premier (and all the other Ministers then also vacate their offices) or dissolve the Legislature.

11. The Cabinet is summoned only by the authority of the Premier and he (or, in his absence, another Minister appointed by him) presides over its meetings. Portfolios are allocated to individual Ministers by the Governor acting in accordance with the Premier's advice but, except for certain limited purposes, these may not include the matters for which the Governor retains direct responsibility (external affairs, defence, etc.) or certain other specified matters (e.g. the judicial functions of the courts, the conduct of criminal prosecutions, and appointments, etc. to public offices).

12. The Constitution also establishes a Governor's Council for the purpose of considering matters for which the Governor retains direct responsibility. This Council consists of the Governor (as Chairman), the Premier, and not less than two or more than three other Ministers appointed by the Governor after consultation with the Premier.

13. The Constitution also requires the Governor to appoint an Opposition Leader whom he is obliged to consult in the exercise of various of his functions (and on whose advice he is, in certain cases, obliged to act). The Opposition Leader is the member of the House of Assembly who is the leader of the largest opposition party in that House or, if there is no party in that position, the member of that House who appears to the Governor to be acceptable as Opposition Leader to a majority of opposition members.

14. Except in relation to certain offices for which specific provision is made by the Constitution, the power to appoint persons to public offices and to remove and exercise disciplinary control over persons so appointed is vested in the Governor, acting in accordance with the recommendation of the Public Service Commission. This Commission consists of a Chairman and four other members, all of whom are appointed by the Governor, acting after consultation with the Premier, who must first have consulted the Opposition Leader. Members of the Commission, who may not themselves be public officers or members of the Legislature and who are not eligible to be appointed to a public office for a period of five years after they cease to be members of the Commission, are appointed to the Commission for a fixed term of between three and five years and are in the meantime protected from arbitrary removal from office.

(b) The Legislature

15. There are two Houses of the Bermuda Legislature: the Senate and the House of Assembly. There are 11 Senators, of whom 5 are appointed by the Governor in accordance with the advice of the Premier, 3 are appointed by him in accordance with the advice of the Opposition Leader and 3 are appointed by him in his discretion. There are 40 members of the House of Assembly, all of whom are elected. To be qualified for appointment to the Senate or for election to the House of Assembly, a person must be a Commonwealth citizen of the age of 21 years or more and must possess "Bermudian status" under the relevant law. A candidate for election must also be ordinarily resident in Bermuda. There are also a number of positive disqualifications in both cases: e.g. if the person in question is of unsound mind, or is currently serving a sentence of more than 12 months' imprisonment, or has been convicted of certain election offences, or holds a public office, or has failed to disclose an interest in a government contract.

16. Voters in elections to the House of Assembly must be Commonwealth citizens of the age of 18 years or more who possess Bermudian status and are ordinarily resident in the constituency in which they seek to be registered as voters. Again, there are certain positive disqualifications: e.g. being of unsound mind, or being currently under sentence of imprisonment (in certain circumstances), or having been convicted of certain election offences.

17. For electoral purposes Bermuda is divided into 20 constituencies, each of which returns two members of the House of Assembly. Constituency boundaries are reviewed periodically (not less than three years nor more than seven years from the previous review) by a Constituency Boundaries Commission. This consists of a Chairman and a judicial member (i.e. a person who

holds or has held high judicial office) and four other members: the Chairman and the judicial member are appointed by the Governor, acting in his discretion; the other members are appointed by him from among the members of the two Houses of the Legislature, two of them in accordance with the advice of the Premier and two in accordance with the advice of the Opposition Leader. The function of the Commission is to recommend such changes (if any) in existing constituency boundaries as, having regard to certain factors (which expressly do not include the racial distribution of voters), will ensure that the constituencies contain, so far as reasonably practicable, equal numbers of persons qualified to be registered as voters. Its recommendations are laid before the House of Assembly and, when approved by the House (with or without modifications), take effect as from the next dissolution of the Legislature.

18. Sessions of the Legislature must be held so that the interval between the end of one session and the beginning of the next does not exceed 12 months. In practice, the Legislature meets much more frequently than this. The Governor must in general act in accordance with the advice of the Premier in deciding both when to prorogue the Legislature (i.e. bring its current session to an end without dissolving it) and when to dissolve it (and thus cause the holding of a general election); but he may, exceptionally, reject the Premier's advice to order a dissolution if he considers that the government of Bermuda can be carried on without it and that it would not be in the interests of Bermuda. The Legislature must in any event be dissolved not later than five years from its first sitting after the previous general election. A general election must be held not more than three months after each dissolution and the Governor must, as soon as practicable after each general election, proceed to the appointment of the members of the Senate.

19. The Legislature has the power to make laws on any subject. Laws are made in the form of bills which, when passed by both Houses, are presented to the Governor for assent on behalf of the Queen. (There are, however, restrictions on the powers of the Senate in relation to certain financial measures and also on its power to block indefinitely other bills that have been passed by the House of Assembly. These restrictions substantially reflect the corresponding restrictions on the powers of the House of Lords in the United Kingdom Parliament.) When assented to, bills become law as acts. In deciding whether to assent or to withhold assent or to reserve a bill "for the signification of Her Majesty's pleasure" (i.e. for the decision of the Secretary of State), the Governor must act in accordance with the usual rules regulating the exercise of his functions, except that he is required to reserve certain categories of bills unless he has previously been authorized by the Secretary of State to assent: these categories include bills which appear to him to be inconsistent with any of the United Kingdom's international obligations or to affect any of the matters for which he retains direct responsibility. The United Kingdom Parliament retains the power to legislate for Bermuda, and various Acts of Parliament (especially those enacted to enable effect to be given to international obligations) authorize legislation to be made for Bermuda (as for other dependent territories) by Order in Council.

Religion

20. Freedom of religion is expressly guaranteed by section 8 of the Constitution.

B. The law

The courts

21. The courts structure in Bermuda consists of the Supreme Court and the Court of Appeal (from which appeals lie in certain cases to the Judicial Committee of the Privy Council) and also a Magistrate's Court, the Special Court, Coroner's Courts and various administrative tribunals. These are all discussed in more detail in the following paragraphs.

22. The Supreme Court is established, and its composition is regulated, by sections 73 to 76 of the Constitution. The Supreme Court has a very wide original jurisdiction in both civil and criminal matters and also has jurisdiction to entertain appeals from subordinate courts, again in both civil and criminal matters. The judges of the Supreme Court consist of the Chief Justice and such number of Puisne Judges as a law enacted by the Legislature may prescribe. The Chief Justice is appointed by the Governor after consultation with the Premier, who must in turn have consulted the Opposition Leader, and the Puisne Judges are appointed by the Governor after consultation with the Chief Justice. The Governor also has the power, acting after consultation with the Chief Justice, to appoint Assistant Justices (who have the same powers as Puisne Judges) whenever the state of business in the Supreme Court so requires. Section 74 of the Constitution contains provisions safeguarding the security of tenure (and thus the independence) of the judges of the Supreme Court by protecting them from removal from office except for proven inability or misconduct as established by a judicial tribunal.

23. The Court of Appeal is established, and its composition is regulated, by sections 77 to 80 of the Constitution. The Court of Appeal entertains appeals on decisions of the Supreme Court given in either its original or its appellate jurisdiction and in both civil and criminal matters. In certain cases a further appeal lies from the Court of Appeal to the Judicial Committee of the Privy Council, either by leave or (as in human rights cases arising under sect. 15 of the Constitution) as of right. The judges of the Court of Appeal, who consist of the President and such number of Justices of Appeal, not being less than two, as a law enacted by the Legislature may prescribe, are appointed by the Governor in his discretion from among persons who currently hold or who have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court. The security of tenure of the judges of the Court of Appeal is protected, under section 78 of the Constitution, in the same way as that of the judges of the Supreme Court.

24. The Governor, acting after consultation with the Chief Justice, has the power to appoint two or more persons to be Magistrates - one of them is designated as the Senior Magistrate - and each such Magistrate is empowered to preside over a Magistrate's Court which has both criminal and civil jurisdiction. In criminal cases, the Magistrate, sitting alone and without a jury, tries those offences (the less serious ones) which are classified as "summary offences" and sits as a court of preliminary inquiry to determine whether there are sufficient grounds for committing accused persons to the Supreme Court for trial on indictment (i.e. by a judge and jury) for the more serious offences. Certain offences, known as "either way" offences, may be tried either summarily in the Magistrate's Court or on indictment in the Supreme Court, at the accused person's election. When a person has been convicted of an "either way" offence after summary

trial in the Magistrate's Court, the Magistrate may, if he thinks that a severer sentence is warranted than he can impose under his own limited sentencing powers, commit that person to the Supreme Court for sentence. In civil matters, the jurisdiction of the Magistrate's Court is limited to cases involving claims, not exceeding $10,000, for debt or for damages for breach of contract or ordinary civil wrongs.

25. Bermuda law also provides for a Special Court to be constituted as occasion requires to exercise any jurisdiction that may be conferred on it by an Act of the Legislature. Each Special Court so constituted consists of a Chairman, who is either the Senior Magistrate or another Magistrate appointed by the Senior Magistrate, and two other members (of whom at least one must be a woman) selected by the Chairman from a panel of at least six persons (including at least three women) appointed by the Governor. A Special Court deals summarily with the cases coming before it but any party to such a case is entitled to be legally represented in the proceedings. Cases involving children are generally dealt with by a Special Court which, when exercising that jurisdiction, is known as "the Children's Court". All cases involving persons under 16 years of age are dealt with by a Special Court except for a few very serious cases, such as those where the charge is murder or attempted murder or manslaughter.

26. The Governor is empowered by law to appoint two or more persons to be Coroners in Bermuda and may appoint one of them to be Senior Coroner. All cases where there is reason to believe that a person has died of unnatural causes or in suspicious circumstances must be reported to a Coroner. He then has the function of deciding whether to order the carrying out of a post-mortem examination and whether to hold an inquest into the death, for which purpose he may, if he thinks fit, be assisted by a jury.

27. Bermuda law also provides for the establishment, and regulates the functions, of a number of administrative tribunals to inquire into specific matters where a more informal procedure or more specialist expertise may be required or where the nature of the inquiry is not essentially judicial. For example, under the Development and Planning Act 1974 tribunals of three or more persons may be appointed to hold public inquiries into objections and representations made in relation to development plans, while under the Misuse of Drugs Act 1972 a tribunal may be appointed to advise the Minister on whether he should give a direction prohibiting a particular medical practitioner from supplying controlled drugs.

Procedure in criminal cases

28. As indicated above, criminal cases in Bermuda are tried either summarily (by a Magistrate's Court) or an indictment (by a judge and jury in the Supreme Court). In each case, the procedure is substantially similar to that obtaining in corresponding circumstances in England and Wales. Trials are "adversarial" in nature and an accused person is presumed innocent until proved guilty beyond reasonable doubt. The right of an accused person to a fair trial, with all the necessary procedural and other safeguards, is guaranteed by section 6 of the Constitution, which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights. Section 5 of the Constitution sets out the safeguards for persons in custody and specifically for those detained in connection with possible criminal proceedings. A machinery for enforcing these provisions is provided by section 15 of the Constitution (see para. 34 below).

29. Where a trial takes place on indictment in the Supreme Court it is conducted by a judge sitting with a jury. The jury is drawn from persons who are qualified for, and not exempt from, jury service. All persons who are not over the age of 65 years and who are registered as parliamentary electors are so qualified unless they are subject to specific disqualification, e.g. because they cannot read and write the English language or because they are blind, deaf or dumb or mentally disabled or because they are detained in prison or in a mental hospital. Some persons may, though qualified, claim exemption from jury service: e.g. Ministers, Magistrates and other members of the legal profession. In a jury trial the judge is the sole arbiter of the law and has the duty to direct the jury on the law applicable to the case and to sum up the evidence for its consideration; but the jury is the sole arbiter of the facts as they appear from the evidence and, as explained above, must be satisfied beyond reasonable doubt before it may return a verdict of guilty. If it is not so satisfied, the accused person must be acquitted. In general, the verdict of a jury must be unanimous but in certain circumstances a jury which has been unable to reach unanimity may be permitted to return a majority verdict supported by nine or more jurors. All verdicts must be delivered in open court by the foreman of the jury in the presence of all the members of the jury.

Responsibility for prosecutions

30. As a general rule, the responsibility for initiating criminal proceedings rests with the Bermuda Police Force. However, the ultimate authority in relation to the prosecution process is vested by the Constitution (sect. 71) in the Attorney-General who is given the power, in any case in which he considers it desirable so to do, to institute and undertake criminal proceedings against any person before any court in Bermuda; to take over and continue any such proceedings that have been instituted by any other person or authority; and to discontinue any such proceedings, whether they were instituted by himself or by any other person or authority. The power to take over and continue proceedings and the power to discontinue proceedings are vested in him to the exclusion of any other person, and in the exercise of all his powers in relation to the control of prosecutions he is expressly exempted from the direction or control of any other person or authority. As a rule, the office of Attorney-General is a public office (i.e. an office in the civil service) the holder of which is appointed by the Governor acting in his discretion; and the Attorney-General's security of tenure, and thus his independence from outside pressure, is safeguarded by provisions (in sect. 86 of the Constitution) substantially the same as those applying in the case of judges of the Supreme Court and of the Court of Appeal (see paras. 23 and 24 above). However, the Constitution contemplates that the office of Attorney-General may sometimes be held by a member of the Legislature, and it provides that in that case his functions in relation to criminal prosecutions (and all the safeguards for his status and his independence in the exercise of those functions) shall be transferred to a separate Director of Public Prosecutions.

Police and prisons

31. The constitution and administration of the Bermuda Police Force is regulated by the Police Act 1974. Subject to that Act, "ministerial" responsibility for the police is reserved to the Governor, acting in his discretion (see para. 9 above) but the Governor may, in his discretion and with the prior approval of the Secretary of State for Foreign and Commonwealth Affairs,

delegate all or part of that responsibility to the Premier or to another Minister designated by him after consultation with the Premier. Prisons in Bermuda are administered by the Prisons Department under the supervision of the Commissioner of Prisons (a public officer) and subject to the general direction and control of the Minister of Health, Social Services and Housing.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Authorities having jurisdiction affecting human rights

32. Chapter I of the Constitution of Bermuda (sects. 1-16) provides the basic legal framework for securing the fundamental rights and freedoms of every person in Bermuda. This chapter, in sections 1 to 14, contains legally enforceable provisions ensuring protection of the right to life, protection from inhuman treatment, protection from slavery and forced labour, protection from arbitrary arrest or detention, protection for the privacy of home and other property, protection of freedom of movement, protection from discrimination on grounds of race, place of origin, political opinions, colour or creed, and protection from deprivation of property, and also ensuring the protection of the law (which covers the right to a fair trial, and all related safeguards, in both criminal and civil matters).

33. Section 15 of the Constitution confers on any person who alleges that any of the provisions of sections 1 to 14 has been, is being, or is likely to be contravened in relation to him, the right to make direct application to the Supreme Court for redress. If any question as to the contravention of any of those provisions arises in proceedings in any subordinate court, that court must refer that question to the Supreme Court. The Supreme Court has the power to hear and determine any such application or reference and to make such orders, issue such writs and give such directions as it considers appropriate for enforcing or securing the enforcement of the relevant provisions. An appeal lies as of right from the Supreme Court to the Court of Appeal and thence to the Judicial Committee of the Privy Council against any determination made under section 15.

34. The right of access to the Supreme Court conferred by section 15 of the Constitution is expressly without prejudice to any other remedy which is lawfully available to the complainant. Many contraventions of a person's fundamental human rights will indeed found alternative causes of action in the courts. For example, a person unlawfully deprived of his personal liberty may bring, or have brought on his behalf, civil proceedings to secure his release (by making an application for a writ of habeas corpus). In addition, he may bring an action for damages for false imprisonment, wrongful arrest or assault or for other violations of his civil rights, depending on the facts. In some cases, the criminal law may also be invoked.

35. In the particular field of discrimination (e.g. on grounds of race, sex, marital or personal status, etc.) there are also some very far-reaching protective provisions (and corresponding enforcement machinery) under the Human Rights Act 1981, as amended. (A copy of this Act in its current form is provided in appendix 3.) The Act prohibits discrimination in a wide range of activities and circumstances (e.g. in the provision of goods, facilities and services and in relation

to the membership, etc., of organizations). It expressly prohibits the publication of inflammatory racist material or incitement to racial hostility and it also prohibits sexual harassment in employment. It contains various provisions for the invalidation or rectification of legal instruments which have a discriminatory element.

36. The principal machinery for securing compliance with the Human Rights Act 1981 is a Human Rights Commission whose members are appointed by the Governor on the advice of the Premier after the Premier has consulted the Opposition Leader. The Commission is required to investigate complaints of discrimination in contravention of the Act (and has extensive powers for this purpose) and, if possible, to settle them by its good offices. Where such a settlement is not possible, the Commission may (with the consent of the Attorney-General) institute criminal proceedings or, where a prosecution would not be appropriate, refer the case to the Minister, who may then refer it to a board of inquiry. A board of inquiry, if it finds that there has been a contravention of any provision of the Act, has the power to order full compliance with that provision and also to order the rectification of any injury caused and the payment of financial restitution for it. If it considers that such an order will not be obeyed (or if such an order is in fact not obeyed, which is itself an additional criminal offence), it may refer the case to the Attorney-General with a view to a prosecution. In addition to its investigative, conciliation and enforcement functions, the Commission has various educational and promotional duties in connection with the elimination of discrimination and also has a general duty to encourage an understanding of the fundamental rights and freedoms of the individual guaranteed by chapter I of the Constitution.

37. Paragraphs 35 and 36 above explain the present position in relation to discrimination on grounds of race, etc. However, the Government of Bermuda has acknowledged that, although progress has been made in achieving equality in the community, further measures need to be taken. Accordingly, in June 1994 the Minister of Human Affairs and Information published a White Paper which set out the Government's proposals to that end. These include the creation of a Commission for Unity and Racial Equality to promote equality of opportunity and to work towards the elimination of systemic racial discrimination; the enlargement of the powers, scope and function of the Human Rights Commission; and the designation of certain racist acts as offences under the Criminal Code. A copy of the White Paper, entitled "Eliminating prejudice and discrimination", is provided in appendix 4.

B. Remedies, compensation and rehabilitation

38. Paragraph 33 above describes the powers of the Supreme Court to grant redress for the violation of a person's fundamental human rights as guaranteed by chapter I of the Constitution, and attention is also drawn to section 5 (4) of the Constitution which provides that any person who is unlawfully arrested or detained by any other person shall be entitled to compensation from that other person. Paragraph 36 above describes the machinery established by the Human Rights Act 1981 for securing redress (including, in appropriate cases, the payment of compensation) to victims of unlawful discrimination. Apart from these provisions, there is no provision in the law of Bermuda which expressly confers a right to compensation or

rehabilitation on a victim of a human rights violation as such, but such a person would, as noted above, very often have a remedy available to him under the ordinary law by virtue of which he could obtain redress (including damages) for the infringement of his ordinary civil rights which the human rights violation would also constitute.

39. Although not solely concerned with circumstances in which there has been a violation of a person's human rights, the provisions of the Criminal Injuries (Compensation) Act 1973 are also relevant in this context. Under this Act, where a person has been killed or injured and the death or injury is directly attributable to a crime of violence committed by any other person, an application for compensation may be made to the Criminal Injuries Compensation Board which is established by the Act. If satisfied as to the facts, and having regard to various factors specified in the Act, the Board may order compensation to be paid out of public funds to or for the benefit of the victim, or (if he died) to or for the benefit of his dependants, or (in certain circumstances) to a person who incurs expense in looking after the victim or as a result of his death. The Board consists of five members appointed by the Governor on the advice of the Premier, of whom one (the Chairman) is a judge of the Supreme Court, one is a qualified medical practitioner and one is a lawyer in private practice in Bermuda. A copy of the Criminal Injuries (Compensation) Act 1973 in its current form - the original version of the Act has been amended from time to time - is provided in appendix 5.

Legal aid

40. The law of Bermuda provides for legal aid to be granted in the following cases:

(a) Trials on indictment, preliminary inquiries into charges of indictable offences and summary trials of "either way" offences;

(b) Civil proceedings in the Supreme Court or in a Magistrate's Court; and

(c) Appeals in criminal or civil cases.

C. Constitutional protection of human rights: derogations, etc.

41. As explained in paragraph 32 above, chapter I of the Constitution of Bermuda guarantees and protects the fundamental rights and freedoms of the individual. This chapter derives directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. The rights and freedoms specified in it are subject only to the limitations which are also specified and which are designed to ensure that the enjoyment of his rights and freedoms by any individual does not prejudice those of others or the public interest. Section 14 of the Constitution permits a law to authorize measures to be taken which derogate from certain specified provisions of chapter I during a period of public emergency but only to the extent that those measures are reasonably justifiable for dealing with the situation that then exists. Whether the measures actually taken are so justifiable is a question that can ultimately be determined by the courts.

D. Effect of human rights instruments in national law

42. Under the Common Law system which operates in Bermuda, treaties which apply to Bermuda (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation or to amend existing legislation or, as the case may require, to adapt existing administrative practices. Any legislation that is necessary may take the form of an Act of the Bermuda Legislature (or an instrument made under such an Act) or an Order in Council made under an Act of the United Kingdom Parliament specifically authorizing the making of such an Order. Where these measures result in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation or, in some cases, by criminal sanctions.

IV. INFORMATION AND PUBLICITY

43. The text of the Constitution of Bermuda and other Bermuda laws relevant to human rights are included in the publication known as the Revised Laws of Bermuda which is kept up to date under the authority of the Attorney-General. Complete sets of the Revised Laws of Bermuda are maintained by the Bermuda Archives, the Bermuda College Library and the Public Library and the public have access to these.

44. The drafts of the reports in respect of Bermuda that are to be submitted to the treaty monitoring bodies under the relevant human rights instruments are prepared by the responsible departments of the Bermuda Government and are then finalized by the United Kingdom Government.

Annex III

BRITISH VIRGIN ISLANDS

I. LAND AND PEOPLE

1. The resident population of the British Virgin Islands (BVI) grew by 47 per cent from 1980 to the 1991 census, when it was estimated at 16,108. The population density was recorded at 109 per square kilometre (282 per square mile). It is estimated that about 40 per cent of the population are immigrants from the Commonwealth Caribbean, most being from St. Kitts-Nevis and St. Vincent. A further 10 per cent are from North America, Europe and other countries; the fastest growing group is from the Dominican Republic. Other statistical information shows the following:

	1991
Per capita income (1991)	US$ 10 200
Gross domestic product	US$ (mill) 210.19
Rate of inflation	Not available
External debt (EC$m)	Not available
Rate of unemployment	3.3 per cent
Adult literacy rate	100.0 per cent
Percentage of population speaking English as mother tongue	90 per cent
Life expectancy:	
Males	73 years
Females	75 years
Infant mortality rate (per 1,000)	23.9 per cent
Maternal mortality rate	-
Fertility rate	2.4 per cent
Percentage of population	
under 15	22.0 per cent
65 and over	6.0 per cent
Population	16 108
Percentage of population in rural and urban areas	82.0 per cent Tortola 18.0 per cent Other Islands
Percentage of households headed by women	13.0 per cent

Religions:

The principal denominations are Methodist 32.9 per cent, Anglican 16.7 per cent, Roman Catholic 10.5 per cent, Church of God 9.2 per cent, Seventh Day Adventist 6.3 per cent, Baptist 4.7 per cent and Pentecostal 4.1 per cent.

II. GENERAL POLITICAL STRUCTURE

A. System of government

2. The islands which now constitute the BVI were first settled by English planters in the late seventeenth century and early eighteenth century and achieved the status of a separate colony, with its own legislature, in 1773. There were various constitutional changes over the years and the "presidency" of the BVI became part of the colony of the Leeward Islands in 1872. This continued until 1956 when the Leeward Islands were de-federated and the presidencies of Antigua, St. Kitts-Nevis-Anguilla, Montserrat and the BVI again became separate colonies with their own separate legislative and other institutions, but administered by the Governor of the Leeward Islands until 1960 when that office was abolished. Unlike other former Leeward Islands, the BVI did not become part of the West Indies Federation, which was formed in 1957 but was dissolved in 1962.

3. The Constitution of the BVI has been modified several times since 1956 and is now contained in the Virgin Islands Constitution Order 1976, as amended by the Virgin Islands (Constitution) (Amendment) Orders 1979, 1982, 1991 and 1994. (Copies of these instruments are provided in appendices 1 to 5.) It provides for a "Westminster style" form of Parliamentary government, with a Governor (representing the Crown), an Executive Council (corresponding to the Cabinet) and an almost entirely elected Legislative Council.

4. The Governor is appointed by the Queen on the advice of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom to whom he is responsible for the exercise of his functions. He presides over the Executive Council, which he is, in general, required to consult and on whose advice he is then required to act. Ministers (who, together with the Governor himself and the Attorney-General, are the members of the Executive Council: see para. 5 below) may, on the Chief Minister's advice, be given responsibility for the conduct of any government business, including the administration of government departments. But the Governor retains direct responsibility for (and is not required to consult the Executive Council on) certain matters, notably defence, external affairs, internal security (including police), the public service and the administration of the courts. He also has reserved legislative powers, under the authority of the Secretary of State, to procure the passage through the Legislative Council of laws which he considers are necessary or expedient for the purposes of any of the matters for which he is directly responsible. He is empowered to delegate some of his responsibilities for these matters to a Minister.

5. The Executive Council comprises the Governor, the Chief Minister, not less than two or more than three other Ministers and the Attorney-General as ex officio member.

6. The Legislative Council comprises the Governor, a Speaker elected by the Legislative Council from persons outside its membership, nine elected members representing nine separate electoral districts, four elected members representing a single, island-wide electoral district, and the Attorney-General in an ex officio capacity.

The powers of the Legislative Council

7. Subject to the provisions of the Constitution, the Legislative Council regulates its own proceedings. It may make laws on any subject, which it does in the form of bills which, having being passed by the Council, are presented to the Governor for his assent. When assented to, they become ordinances. Though the Governor has the power to refuse assent or to reserve a bill for signification of Her Majesty's pleasure, in practice most bills are government bills, drafted in the Attorney-General's Chambers and approved by the Executive Council before being introduced in the Legislative Council. Formally, all ordinances are subject to disallowance by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the right to legislate for the BVI by Act of Parliament or by Order in Council.

Parliamentary sessions

8. The maximum life of the Legislative Council is fixed at four years. But the Governor may dissolve it earlier, after consultation with the Chief Minister, thus paving the way for a general election before the expiry of its maximum period. A general election must be held within two months of a dissolution. There must be at least one session of the Legislative Council in every year. Prorogation, which is the way in which a session is terminated when the Legislative Council is not being dissolved, is effected by the Governor, acting in accordance with the Chief Minister's advice.

9. The legal framework for the conduct of elections is provided for in the Constitution and in the Elections Act 1994.

10. As explained in paragraph 6 above, the BVI is divided into nine electoral districts, each returning a single member, and one island-wide electoral district returning four members. Elections are conducted on the "first past the post" basis, that is to say, in each electoral district the candidate obtaining the most votes (or, in the island-wide electoral district, each of the four candidates obtaining the most votes) is deemed to have been elected.

11. Under the Constitution a person is qualified for election as a member of the Legislative Council if he is a British subject aged 21 or over, is deemed to belong to the BVI and is otherwise qualified as a voter within the BVI. But certain persons, though otherwise qualified in accordance with these provisions, are expressly disqualified by the Constitution from membership of the Legislative Council. These include persons who, by virtue of their own act, have allegiance to any foreign power, or who hold public office, or who are Ministers of Religion or who have been declared bankrupt or insane.

12. The Constitution also sets out the qualifications for voters. A person who is at least 18 years old, is a British subject and is deemed to belong to the Virgin Islands, and who is also either domiciled and resident in the BVI on the qualifying date or is, on that date, domiciled

in the BVI and resident in the United States Virgin Islands is qualified to be registered as a voter. Again, there are certain specific disqualifications, e.g. because of insanity or because of a current prison sentence of more than 12 months.

13. The registration of voters is regulated by the Elections Act, 1994, which provides for an enumeration of voters "in such years as the Governor in Council may appoint on the recommendation of the Supervisor of Elections" but also provides for the continuous registration of voters through the year.

The party system: Government and Opposition

14. The BVI has several political parties, the principal ones currently being the Virgin Islands Party, the Concerned Citizens Movement and the United Party. But many candidates for election to the Legislative Council stand as independents. The Constitution provides that, if a single political party gains a majority of the elected seats in the Council, the Governor is to appoint as Chief Minister the elected member who is recommended by the majority of the elected members belonging to that party; if no party gains such a majority or if no such recommendation is forthcoming, he is to appoint as Chief Minister the elected member of the Council who, in his judgment, is best able to command the support of a majority of the elected members. The other Ministers (who, together with the Chief Minister, then form the Government) are appointed by the Governor, on the advice of the Chief Minister, from among the other elected members of the Council.

15. When a single party has gained a majority in the Council, the Government will usually consist of Ministers drawn from that party alone. But Governments reflecting or supported by a coalition of more than one party, or one or more parties and one or more independents, are not uncommon. At the last general election, in February 1995, the Virgin Islands Party won six of the seats, the Concerned Citizens Movement and the United Party each won two of the seats and independents won the remaining three seats. As a result, the Government was formed by the Virgin Islands Party (VIP) with the support of one of the independents. There was a by-election in one of the VIP seats in July 1995 but the VIP retained that seat and was then joined by one of the other members who had originally been elected as an independent. The current position is therefore that the Government is a coalition Government, supported by the seven VIP members and by one independent (who himself holds the portfolio of Communications Minister).

16. The Constitution also empowers the Governor to appoint an official Leader of the Opposition. He is the elected member of the Legislative Council who is recommended by the elected members belonging to the largest party in the Council which is opposed to the Government or, if no such recommendation is forthcoming or there is no single party in that position, the elected member who, in the Governor's judgment, is best able to command the support of the elected members who are opposed to the Government. Equal time is given to both the Government side and the Opposition side in the Legislative Council to express and defend their views on matters of public interest. The proceedings of the Council are open for the public to attend and are also broadcast live on the radio.

B. The law

The courts

17. The courts' structure in the BVI consists of a Magistrate's Court, a High Court and a Court of Appeal (which form part of the Eastern Caribbean Supreme Court) and the Judicial Committee of the Privy Council. The BVI falls within the jurisdiction of the Eastern Caribbean Supreme Court and is served by judges of that Court. The Eastern Caribbean Supreme Court and its judges serve not only the BVI but also a number of independent countries in the Eastern Caribbean and a number of other British dependent territories in the region. There are elaborate provisions, which form part of the law of all the countries and territories concerned, regulating the appointment and tenure of office of the judges and ensuring that they are protected from political interference from any source. So far as concerns the Magistrate and the holders of other subordinate judicial or quasi-judicial offices in the BVI (e.g. the local Registrar of the High Court), the Constitution of the BVI requires the Governor, in exercising his powers of appointment, etc., to consult with the Judicial Services Commission, which is itself established by the Constitution and which consists of the Chief Justice of the Eastern Caribbean Supreme Court, another judge of that Court and the Chairman of the Public Service Commission.

Criminal proceedings

18. The responsibility for initiating criminal proceedings in the BVI is generally exercised by the police who will, however, refer matters which might involve some difficulty to the Attorney-General's Chambers for guidance or for the Attorney-General to take over. In some cases the Attorney-General may himself initiate proceedings.

19. There are three categories of criminal offences in the BVI: those triable only on indictment (that is, before a judge and jury); those triable summarily only; and those triable either way (that is, either on indictment or summarily).

20. Very serious offences, such as murder, manslaughter and rape, are triable only on indictment. The least serious offences, known as summary offences, are tried by the Magistrate, who sits without a jury. The offences triable either way can be tried either by the Magistrate or by a judge sitting with a jury, depending on the circumstances of the case, the election of the defendant and the agreement of the prosecution.

21. In addition to trying summary offences (and offences triable either way which it has been decided should be tried summarily), the Magistrate also sits as a court of preliminary inquiry for the purpose of deciding whether there are sufficient grounds for committing an accused person to the High Court for trial on indictment. Where the Magistrate has convicted, after summary trial, a person charged with an offence triable either way, he may, if he thinks that a more severe penalty is called for than he has power to impose, commit that person to the High Court for sentence.

22. The Magistrate usually sits in open court to which the public and the media are admitted.

23. Cases involving persons under 16 years of age are usually heard in the Juvenile Court. This is a specially constituted court presided over by a Magistrate who sits with assessors. These are lay persons appointed by the Governor. The Juvenile Court is different from, and independent of, the Magistrate's Court and is held at a different time and may sit in a different place from the Magistrate's Court.

Appeals in criminal proceedings

24. Persons convicted in the Magistrate's Court or the High Court may appeal to the Court of Appeal against the sentence imposed if they pleaded guilty, or against the conviction or sentence imposed if they pleaded not guilty. In some cases a further appeal may lie to the Judicial Committee of the Privy Council, either as of right or with the leave of the Court of Appeal. It is always possible for the Judicial Committee to grant special leave to appeal.

Trials

25. As is usual in Common Law systems, criminal trials are adversarial in nature. An accused person is presumed innocent until proved guilty and the prosecution must prove his guilt beyond reasonable doubt. Though there are no legislative provisions expressly guaranteeing the right to a fair trial, the procedural and other rules relevant to that right which are applied by the courts in the BVI are essentially similar to those applied by the courts in the United Kingdom and in other Common Law jurisdictions in the Caribbean. As noted above, the superior courts for the BVI are part of the Eastern Caribbean Supreme Court.

Juries

26. In trials by judge and jury, the judge decides questions of law, sums up the evidence for the jury, instructs the jury on the relevant law, and either discharges the accused or passes sentence in accordance with the jury's verdict. The jury is the sole arbiter of facts and decides whether the prosecution has proved beyond reasonable doubt that the defendant is guilty. If not, the jury must find him not guilty. Where a jury cannot reach a unanimous verdict, it may be directed by the judge to bring in a majority verdict.

27. In general, persons between the ages of 21 and 60 years who are qualified to vote are eligible for jury service. Some particular categories of persons are not eligible. These include priests and members of the legal profession.

Coroner's courts

28. In the BVI, the Magistrate is the Coroner for the Islands. Violent or unnatural deaths, and sudden deaths where the cause is unknown, are investigated by the Coroner. In some, but not all, cases the Coroner must summon a jury to assist him.

Civil proceedings

29. Civil proceedings take place either in the Magistrate's Court or in the High Court. The jurisdiction of the Magistrate's Court extends to claim and disputes in which the amount in dispute does not exceed US$ 20,000.

Appeals in civil proceedings

30. An appeal may lie in civil proceedings from the Magistrate's Court or the High Court to the Court of Appeal. A further appeal may lie from the Court of Appeal to the Judicial Committee of the Privy Council either as of right or with the leave of the Court of Appeal. It is always possible for the Judicial Committee to grant special leave to appeal.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

31. The basic means of protecting and enforcing human rights in the BVI - in addition, that is, to the pressure of public opinion through the democratic process - is by invoking the relevant domestic law and the ordinary courts system, which, as explained above, is independent and impartial and is protected from political interference.

32. Under the Common Law system which operates in the BVI, treaties which apply to the BVI (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation - this could be a law enacted locally or an Order in Council made by the United Kingdom Government - or to amend existing legislation or to adapt administrative practices, as the case may require. When this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation, or, in some cases, through criminal sanctions.

IV. INFORMATION AND PUBLICITY

33. The text of the United Nations human rights instruments to which the United Kingdom is a party in respect of the BVI are usually publicized when they become available on the Islands. The texts may be published in the Official Gazette and in sections of the local press or placed in the library and in schools. The Government's Department of Information and Broadcasting provides publicity on various human rights matters in news or discussion programmes originating from external sources such as the United Nations radio in New York.

Annex IV

CAYMAN ISLANDS

I. LAND AND PEOPLE

1. The Cayman Islands are a dependent territory of the United Kingdom consisting of three islands: Grand Cayman, Cayman Brac and Little Cayman. The Territory has a total area of approximately 260 square kilometres, divided as follows: Grand Cayman, about 195 square kilometres; Cayman Brac, 39 square kilometres; and Little Cayman, 26 square kilometres. George Town, the capital of the Territory, is located on Grand Cayman.

2. According to the results of the census of population and housing conducted in October 1989, the resident population of the Cayman Islands was 25,355, compared with 16,677 in 1979 when the previous census was taken. Some 13,202 persons, or 52 per cent of the residents of the Territory, were Caymanians by birth. The census showed that 23,877 persons (94.2 per cent of the population) reside on Grand Cayman; 1,445 on Cayman Brac and 33 on Little Cayman. The population of George Town, the capital, is 12,972. The birth rate in 1991 was estimated at 18 per 1,000 and the death rate at 4 per 1,000.

Statistical information

3. Other statistics are as follows:

Population	25 355
Per capita income (1991)	US$ 27 280
Gross domestic product (1991)	US$ 700 million
Rate of inflation (1992/1993)	2.5 per cent
External debt: net public sector debt (1991)	US$ 21.3 million
Rate of unemployed:	
Males	3 per cent
Females	4 per cent
Literacy rate	96 per cent
Percentages of population by reference to mother tongue	N/A
Life expectancy:	
Male and females	Average 77.1 years
Infant mortality rate:	
Males	4 per 1 000
Females	5 per 1 000

Maternal mortality rate	N/A
Fertility rate (1992)	371
Percentage of population under 15 and over 65 years of age	29 per cent

II. GENERAL POLITICAL STRUCTURE

A. System of government

General

4. The Cayman Islands are a British Dependent Territory.

5. The present Constitution of the Cayman Islands is contained in the Cayman Islands (Constitution) Order 1972, as amended by the Cayman Islands (Constitution) (Amendment) Order 1984, the Cayman Islands (Constitution) (Amendment) Order 1987, the Cayman Islands (Constitution) (Amendment) Order 1992 and the Cayman Islands (Constitution) (Amendment) Order 1993. Copies of these instruments are provided in appendices 1 to 5 respectively.

6. The Constitution provides for a modified form of "Westminster-style" Parliamentary government, with a Governor (representing the Crown), an Executive Council (substantially corresponding to the Cabinet) and a largely elected legislature, the Assembly, from which the Executive Council is drawn and to which it is answerable.

The Executive

7. The Governor, who is the head of the Executive, is appointed by the Queen on the advice of the Secretary of State for Foreign Affairs of the United Kingdom, to whom he is responsible for the exercise of those of his functions which the law does not require him to exercise on the advice of some other authority. In general, however, he is required to consult the Executive Council in the exercise of his functions and to act in accordance with its advice. But he is not required to consult the Council or to act in accordance with its advice in relation to certain matters for which he retains direct responsibility (see below) and he may also act contrary to its advice (if he obtains the approval of the Secretary of State) in cases where he considers this to be called for by considerations of public order, public faith or good government.

8. The Executive Council, at whose meetings the Governor usually presides, consists of three ex officio members (the Chief Secretary, the Attorney-General and the Financial Secretary) and five other members, styled Ministers, who are elected by the elected members of the Assembly from among their own number. The Governor retains direct responsibility for defence, external affairs, internal security, the police and the public service, exercising this responsibility, as appropriate, through officials. The Chief Secretary holds the portfolio for Internal and External Affairs, the Attorney-General holds the portfolio for Legal Affairs and the Financial Secretary holds the portfolio for Finance and Development. The five Ministers are responsible for other routine government business, each heading a Ministry to which a specific portfolio is assigned, with the permanent secretaries of the various departments within the

Ministry implementing ministerial policy and overseeing the administration of these departments. Currently, the portfolios assigned to Ministers are as follows: Tourism, Environment and Planning; Community Development, Sports, Youth Affairs and Culture; Agriculture, Communications and Works, Education and Aviation; and Health, Drug Abuse Prevention and Rehabilitation. The Constitution requires Ministers to exercise their individual responsibilities in accordance with the principle of collective responsibility.

The Legislature

9. The Legislature consists of the three ex officio members (the Chief Secretary, the Attorney-General and the Financial Secretary), 15 elected members and (if he is not himself one of the elected members) a Speaker. (The Speaker is chosen by the elected members of the Assembly either from among their own number or from among persons who are qualified to be elected members.) Both candidates for elections to the Assembly and persons seeking to be registered as voters in such elections must possess certain prescribed residence and other qualifications establishing their close connection with the Cayman Islands. A candidate for election must have attained the age of 21 years and must not be otherwise disqualified (e.g. because he is a public officer or is of unsound mind or is serving, or has recently served, a long term of imprisonment or has been convicted of an offence connected with elections). A person seeking registration as a voter must have attained the age of 18 years and he, too, must not be otherwise subject to disqualification (e.g. because he is of unsound mind or because he is serving a long term of imprisonment or because of his involvement in an offence connected with elections).

10. For electoral purposes, the Cayman Islands are divided into six electoral districts, each returning a number of elected members to the Assembly in proportion to its population. Elections are not contested by political parties as such but in the most recent (1992) general election, in which there was a record turnout of more than 90 per cent of the Territory's 10,193 registered voters, 12 of the 15 seats were won by a group of candidates known as the National Team and 3 were won by independents. (The National Team was opposed to certain proposed changes to the Constitution which were accordingly not proceeded with when the Constitution was amended in 1993: see para. 23 below.) There must be a general election to the Assembly within two months of each occasion when it is dissolved and, if it has not been earlier dissolved by the Governor, acting on the advice of the Executive Council, each Assembly must be dissolved at the end of four years from when it first met after the previous general election. Not more than 12 months may elapse between one session of the Assembly and the next: in practice, the Assembly is in session much more frequently than that.

11. The Assembly may make laws on any subject. It exercises this power by passing bills which are presented to the Governor for his assent. He must then, in accordance with the usual rules governing the exercise of his functions, either assent to them or refuse his assent or reserve them for decision by the Secretary of State. There are certain categories of bills which he is required to reserve, including bills which appear to discriminate between one community or religion and another and bills which appear to be inconsistent with treaty obligations. The Governor has a reserved power, exercisable with the prior approval of the Secretary of State, to compel the passage of legislation (or of legislation in a certain form) through the Assembly if he considers that this is required in the interests of public order, public faith or good government.

Formally, all laws assented to by the Governor may be disallowed by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate directly for the Cayman Islands by Act of Parliament or by Order in Council.

12. As well as discharging its ordinary legislative functions, the Assembly exercises a general oversight over the activities of the executive Government and could, for example, defeat it on an issue of confidence or withhold financial provision. In addition, the Assembly appoints various committees of its members which scrutinize the work of particular government departments. The public takes a keen interest in the debates of the Assembly, which are widely reported in the local newspapers and on radio and television.

B. The law

The courts

13. The courts of the Cayman Islands, which are independent of the Executive and the Legislature and whose judges are not subject to the control or direction of any other person or authority, consist of the Cayman Islands Court of Appeal, the Grand Court and the subordinate courts. The principal subordinate courts are the Summary Courts but there are also Juvenile Courts, to deal with cases involving young offenders, and various administrative tribunals exercising a quasi-judicial jurisdiction. In certain cases an appeal lies from the Court of Appeal to the Judicial Committee of the Privy Council.

14. The Court of Appeal comprises a President and not less than two Justices of Appeal. They are appointed by the Governor, on the instructions of the Secretary of State, from among persons who hold or have held high judicial office in some part of the Commonwealth. The Constitution protects their independence from political or other interference by providing that a judge of the Court of Appeal, once appointed, cannot be removed from office during his ordinary term of office except for proven misconduct or incapacity as established by a judicial tribunal.

15. The Grand Court, which has unlimited jurisdiction in both criminal and civil cases, consists of a Chief Justice and such number of other judges as the law may from time to time prescribe. The judges of the Grand Court are appointed by the Governor from among persons who have practised as barristers or solicitors in England, or in some other Commonwealth country with comparable arrangements, for at least 10 years. The independence of the judges of the Grand Court from political or other interference is protected by provisions entrenching their tenure of office, similar to those applying to the judges of the Court of Appeal.

16. The Summary Courts have jurisdiction to try a wide range of minor offences summarily and also to commit persons for trial by the Grand Court on more serious charges, and they also have a limited civil jurisdiction. A Summary Court consists either of a magistrate (sitting alone or with one or more Justices of the Peace) or of two or more Justices of the Peace (in which case its jurisdiction may be restricted). Magistrates are appointed by the Governor and must be professionally qualified, i.e. they must have practised as barristers or solicitors in England, or in some other Commonwealth country with comparable arrangements, for at least five years. Justices of the Peace do not have to be professionally qualified and the Governor may appoint any fit and proper person to be a Justice of the Peace.

17. Appeals lie in both criminal and civil cases from Summary Courts and Juvenile Courts to the Grand Court. The Grand Court also has a general jurisdiction to supervise the proceedings of subordinate courts and to make such orders, etc. as it considers appropriate for ensuring that justice is duly administered by them. Appeals lie from the Grand Court to the Court of Appeal and thence, in certain cases, to the Judicial Committee of the Privy Council.

Administration

18. The responsibility for the administration of the courts system rests effectively with the Chief Justice. The Attorney-General is primarily responsible for the enforcement of the criminal law. (He is also the Government's principal legal adviser and has certain functions in the civil law as the representative of the Crown (or the public interest).) The Attorney-General is expressly empowered by the Constitution to institute and undertake criminal proceedings against any person before any court for any offence, to take over and continue any such proceedings that have been instituted by any other person or authority and to discontinue any such proceedings that have been instituted by himself or any other person or authority. In the exercise of these powers he is not subject to direction or control from anybody else and, in order to insulate him from political interference, the Constitution protects his tenure of office in the same way as it protects the tenure of office of judges of the Court of Appeal and the Grand Court.

Police and prisons

19. As noted above, responsibility for the police is reserved to the Governor, but it is discharged, together with responsibility for prisons, as part of the Chief Secretary's portfolio. Probation services, together with other social services, fall within the portfolio of the Minister for Community Development, Sports, Youth Affairs and Culture. The crime rate in the Cayman Islands is very low by international standards.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

20. The basic means (in addition to the pressure of public opinion through the democratic process) of protecting and enforcing human rights in the Cayman Islands is by invoking the relevant domestic law and the ordinary courts system which, as explained above, is independent and impartial and is protected from political interference.

21. Under the Common Law system which operates in the Cayman Islands, treaties which apply to the Cayman Islands (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation or to amend existing legislation or to adapt existing administrative practices, as the case may require. (Legislation for this purpose in the Cayman Islands might take the form of a law enacted by the Assembly or it might take the

form of an Order in Council made by the United Kingdom Government applicable to a number of dependent territories, e.g. the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, which gave effect to the United Nations Convention against Torture, etc. in the territories to which it applied, including the Cayman Islands.) Where this process results in the creation or definition of specific legal rights and these are denied or interfered with (or this is threatened), a remedy will be available in the courts by way of the ordinary procedures of civil litigation or, in some cases, by way of criminal sanctions.

22. A person in the Cayman Islands who needs legal advice or legal representation in the protection or enforcement of his rights but who lacks the financial means to procure it himself can obtain free assistance, i.e. the cost of such advice or representation will be borne by public funds. This legal aid is available in all cases before the Grand Court and in the more serious criminal cases before the Summary Courts.

23. There have in recent years been proposals to introduce into the Constitution of the Cayman Islands a "Bill of Rights", similar to those in the Constitutions of a number of other British dependent territories, which would set out and define, and expressly make legally enforceable, the fundamental human rights and freedoms of the individual. The most recent proposals to that effect, which it had been assumed commanded substantial support, became, however, an issue in the general elections which took place in 1992 when they were opposed (because of certain aspects of them) by the National Team whose candidates then won an overwhelming majority of the seats in the Assembly (see para. 10 above). Those particular proposals could therefore not be proceeded with and the provisions in question were not included, as had been originally envisaged, in the amendments to the Constitution which were made in 1993. But the general proposal to introduce an enforceable Bill of Rights into the Constitution remains under active consideration and a committee of the Assembly has been appointed to examine how it may best be taken further.

24. One amendment to the Constitution which was, however, made in 1993 was the incorporation of provision for the office of Complaints Commissioner (i.e. a sort of Ombudsman). The details of the functions, jurisdiction and powers of the Complaints Commissioner are to be spelled out in a law to be enacted by the Assembly and such a law is now in the course of preparation.

IV. INFORMATION AND PUBLICITY

25. The Government of the United Kingdom publishes, through Her Majesty's Stationery Office, the text of United Nations human rights instruments to which the United Kingdom is a party. Those instruments which also affect the Cayman Islands are published by the Cayman Islands Government Information Services, through the Government publication The Official Gazette. The Cayman Islands Government prepares the initial drafts of reports for submission by the United Kingdom Government to the bodies established under the various United Nations human rights instruments to monitor State party compliance with treaty obligations.

Annex V

FALKLAND ISLANDS

I. LAND AND PEOPLE

1. Situated in the South Atlantic, the Falkland Islands lie about 772 kms (480 miles) north-east of Cape Horn and about 480 kms (300 miles) distant from the nearest point on the South American mainland. They consist of about 200 islands, the largest being East Falkland and West Falkland, and their total land area is some 12,173 square kms (4,700 square miles).

2. Background statistical information, using the most up-to-date figures available, is as follows:

Per capita income	£18 859	Official figures to calculate GNP and per capita income are not available. However, GNP is estimated to have been £40 million in 1992
Gross national product	£40 m.	
Rate of inflation	0.89 per cent	(1992/93)
External debt	£104 283	
Rate of unemployment	No statistics available	
Literacy rate	99.5 per cent	
Population	2 121	(1991 census)
Percentage of population speaking English as mother tongue	99 per cent	
Life expectancy	Figures not available	
Infant mortality rate	No infant deaths recorded in last five years	
Birth rate	13 per 1 000	

Mortality rate	10 per 1 000	
Maternal mortality rate	No maternal deaths in last five years	
Fertility rate	56 per 1,000	
Percentage of population:		
Under 15 years old	Males under 15	10.1 per cent
	Females under 15	9.8 per cent
Over 65 years old	Males	4.9 per cent
	Females	3.9 per cent
Percentage of population	Rural	22.5 per cent (males 57 per cent, females 43 per cent)
	Urban	77.5 per cent (males 52.3 per cent, females 47.7 per cent)
Percentage of households headed by women	23.3 per cent	(including never married (6.5 per cent), married (5.8 per cent), widowed (7 per cent) and divorced (4 per cent))

(Most figures provided by Falkland Islands Government and the Report of the 1991 Census.)

3. The population is almost exclusively of British birth or descent and many can trace their origins in the territory back to the nineteenth century.

II. GENERAL POLITICAL STRUCTURE

A. System of government

Government

4. The Falkland Islands is a British Dependent Territory.

5. The present Constitution, which came into force on 3 October 1985, is contained in Schedule 1 to the Falkland Islands Constitution Order 1985. A copy is provided as appendix 1.

6. Chapter I of the Constitution, which is discussed in more detail in part III below, contains provisions which guarantee the fundamental rights and freedoms of the individual. The preamble to that chapter recites the right of all peoples to self-determination.

7. The main features of the Constitution, apart from chapter I, are as follows:

(a) The Governor is appointed by the Queen on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs, to whom he is responsible. Executive authority is vested in the Governor but he is obliged to consult the Executive Council in the exercise of his functions, except in certain specified cases. The Governor is entitled to act against the advice of the Executive Council but, when he does, he must give a report, including his reasons for so doing, to the Secretary of State. The Executive Council consists of the Chief Executive and Financial Secretary, ex officio, and three elected members elected annually by the eight elected members of the Legislative Council from among their own number. The Governor summons meetings of the Executive Council and normally presides. The Governor appoints, removes and exercised disciplinary control over public officers but the Constitution provides that in doing so he shall consult such persons or authority as may be prescribed by ordinance. (No ordinance has so far been promulgated for this purpose but the Governor's powers are in fact exercised on the recommendations of informally constituted boards and committees established to advise him in such matters.)

(b) The Legislative Council for the Falkland Islands consists of eight elected members (who alone can vote on matters coming before it) and two ex officio members (the Chief Executive and Financial Secretary), but the Constitution provides that the Attorney-General has the right to take part in the proceedings of the Legislative Council (but not to vote) with the consent of the person presiding. The Governor is not a member of the Legislative Council but he, or in his absence another member of the Legislative Council appointed by the Governor, presides over its deliberations. The Governor "with the advice and consent of the Legislative Council" may make laws for the peace, order and good government of the Falkland Islands. Proposed laws are presented to the Legislative Council in the form of bills which, if passed by the Legislative Council, are presented for assent. The rules as to the enactment of laws are set out in Annex A to the Constitution. Laws are usually assented to by the Governor but in rare cases assent will be by the Queen through a Secretary of State. Paragraph 5 of Annex A to the Constitution prohibits the Governor from assenting to certain kinds of bills unless the bill contains a clause suspending the operation of the law "until the signification of Her Majesty's pleasure thereon". Once a bill is assented to, it becomes law as an Ordinance but any Ordinance to which the Governor has given his assent "may be disallowed by Her Majesty through a Secretary of State". So far as is known, no Falkland Islands Ordinance has been disallowed for over a hundred years. The Governor has a power under section 49 of the Constitution, notwithstanding that a bill has not been passed in the form it was introduced, or at all, to declare that the bill is to have effect as if it had been passed by the Legislative Council either in the form it was introduced in the Legislative Council or with such amendments that have been moved or proposed in the Council as the Governor thinks fit, and the Governor can assent to the bill in that form. The Governor cannot, however, exercise these special powers without prior instructions from the Secretary of State unless in his judgment the matter is so urgent that it is necessary for him to do so before having consulted the Secretary of State. The United Kingdom Government has retained the right to make laws for the Falkland Islands and, in exercise of its power to do so, frequently makes laws applying to the Falkland Islands relating to international matters, such as obligations under a treaty or convention applied by the United Kingdom Government to the Falkland Islands. The Governor convenes the sessions of

the Legislative Council which must be held at least every 12 months. In practice, it meets, on average, four times a year. Any member may introduce bills or propose motions, and these may be passed by a simple majority. But bills or motions may not be proceeded with (and petitions may not be received) without the endorsement of the Governor if they would involve increases in taxes or public expenditure or the alteration of the salary, allowances or conditions of service (including pension rights) of public officers.

(c) The Legislative Council must be dissolved no later than four years after the previous general election but the Governor has the power to dissolve it earlier. There must be a general election within 70 days of a dissolution. In the event of a seat becoming vacant between general elections, a by-election (casual election) for the vacant seat takes place. An Electoral Ordinance was enacted in 1988; and it, and the provisions of the Constitution, govern elections of members of the Legislative Council. The Falkland Islands are divided into two constituencies: the town of Stanley and its neighbourhood, which make up the Stanley Constituency; and the rest of the country, which makes up the Camp Constituency. There are four elected members for each constituency and only persons who are registered as electors and are of the age of 21 years or more are entitled to stand for election. Of course, only persons who are registered as electors may vote at elections. The persons qualified to be registered as electors are persons who are Commonwealth citizens over the age of 18 years of age and who satisfy the residence qualifications. A Commonwealth citizen who was born in the Falkland Islands must have been resident in the Falkland Islands for the period of 12 months preceding the qualifying date for preparation of the register. A Commonwealth citizen not born in the Falkland Islands must have been resident in the Falkland Islands for five years immediately preceding the qualifying date. The qualifying date is 15 May in each year and, as the Constitution allows, "resident" is defined by the Electoral Ordinance 1988. The definition allows absences for business purposes, for holidays or for educational purposes (among other things) to be counted, subject to conditions, towards the qualifying period.

(d) The most recent general election was held on 14 October 1993 when 17 candidates offered themselves for the four Stanley seats and eight for the four Camp seats. All were independents.

(e) The judicial and legal system is described in more detail below. Provisions relating to the Supreme Court and Court of Appeal, including provisions regulating the appointment and the security of tenure of office of judges, are contained in chapter VIII of the Constitution.

Religion

8. Freedom of religion is expressly protected by section 9 of the Constitution.

History

9. Early settlement followed the taking of formal possession of West Falkland and "all the neighbouring islands", by Commodore John Byron in the name of the British Government in January 1765. An expedition led by Captain McBride established a settlement at Port Egmont

on 8 January 1766. Apart from a period between June 1770 and January 1771, British occupation continued until 1774. British settlement and administration has been continuous since 1833, apart from a brief interruption when Argentina illegally occupied the Islands during April, May and June 1982.

10. Settlers and fresh capital were gradually attracted to the Islands. The Falkland Islands Company, which was incorporated by charter in 1851, acquired extensive tracts of land throughout the Islands. The centre of government was moved to Stanley in 1844 and the first legislative council set up in 1845. Settlers played an important part in its deliberations.

11. The early industry of the territory was the exploitation, mainly for their hides, of the wild cattle running freely over East Falkland. These wild cattle were descended from cattle introduced in the previous century. They were the property of the Crown and their slaughter was subject to licences issued by the Governor.

12. In 1842 Governor Moody suggested that sheep could be raised, and commercial sheep farming was first attempted on East Falkland where, by the year 1860, a considerable number were being run. During the succeeding decade a start was also made on West Falkland. Between the years 1870 and 1880 a change from cattle to sheep ranching took place and subsequently all of the wild cattle were killed off.

13. A period of steady prosperity followed and in 1885 the territory became self-supporting. Wireless communication with the outside world was opened in 1912. During the first quarter of the twentieth century, Stanley became a minor ship-repairing port and coaling station. By the 1930s the permanent population had increased to 2,500.

14. During the two world wars the Falkland Islands Company and other absentee farm landlords consolidated their hold over the local economy - reinvesting little. The economy stagnated and in the 1950s and 1960s emigration increased. Talks between the United Kingdom and Argentina about sovereignty continued during the 1960s, and in 1971 a communications agreement was signed between the Argentine and British Governments. For the following 10 years the only air link with the outside world was via the Argentine city of Commodoro Rivadavia. The Islands became increasingly dependent upon Argentina for outside supplies - especially oil. But Islanders adamantly refused to become part of Argentina.

15. The Falkland Islands were invaded and illegally occupied by Argentine military forces on 2 April 1982. A British task force was immediately despatched and, following a conflict in which over 1,000 British and Argentine lives were lost, the Argentine forces surrendered on 14 June 1982.

16. Since 1982 the pace of development on the Islands has accelerated: first, with British grant aid to assist in development and rehabilitation after the 1982 conflict; and then, after 1986, financed from income from the sale of fishing licences - mainly for catching illex squid. (The 1993/94 income from the sale of fishing licences was approximately, 20 million). A new hospital, a new senior school, community leisure and sports facilities, port facilities, a new international airport, a modern telecommunications system and new roads and houses have all been built with funds provided by the British and Falkland Islands Governments.

17. After 1982 the Falkland Islands Company sold all its West Falkland farms into private local ownership. Its holdings in East Falklands (amounting to some 900,000 acres) were purchased by the Falkland Islands Government in May 1991. Over 95 per cent of the total land area is now owned by residents of the Falkland Islands.

B. The law

Administration

18. The courts structure consists of the Summary Court, the Magistrate's Court, the Supreme Court, the Court of Appeal and the Judicial Committee of the Privy Council and also a Coroner's Court. Their composition and jurisdiction are described in more detail below.

19. The Falkland Islands judiciary are entirely independent of the Government and are not subject to direction or control from the Executive or members of the Islands Legislative Council. The tenure of office, and thus the independence, of the President and Justices of the Court of Appeal and the Chief Justice is expressly entrenched in the Constitution. Responsibility for the administration of justice rests, effectively, with the Chief Justice for the Islands who is appointed by the Governor on instructions from the Secretary of State for Foreign and Commonwealth Affairs and is removable, during his ordinary term of office, only for proven misconduct or incapacity as established by a judicial tribunal. He must be a person who is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or who has been qualified for at least 10 years to practise before such a court.

20. The current Chief Justice resides in England and visits the Islands as and when necessary. The principal resident judicial figure is the Senior Magistrate (see para. 21 below). There are also Justices of the Peace in the Islands who are appointed by the Governor primarily upon the recommendation of the Senior Magistrate and Chief Justice.

21. The Senior Magistrate is appointed by the Governor after consulting the Chief Justice. He is also, by virtue of his office, Coroner for the Islands and is responsible for the Coroner's Court. He is required by legislation to be an experienced lawyer who is entitled to practise as an advocate or as a solicitor in a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland and to have been so entitled for at least five years.

22. The Governor is responsible for the police and the Islands' prison. He is assisted in this by a Police Advisory Committee whose members include representatives of the community and which advises upon policy issues relating to the policing of the Islands. There is also a Board of Visiting Justices, comprising three Justices of the Peace, who are obliged, at least four times in each year, to visit and inspect the prison and receive complaints from prisoners. The Board must report its findings to the Governor.

23. The Constitution establishes an Advisory Committee on the Prerogative of Mercy. (This is the power, which is vested in the Governor on behalf of the Queen, to pardon a person convicted of a crime or to remit all or part of a sentence imposed by a court.) The Committee's

membership includes two members of the Islands' Legislative Council. The Governor must consult the Committee in every case where the exercise of the Prerogative of Mercy is being considered.

24. The Attorney-General and a Senior Crown Counsel are the Government's advisers on all legal issues which affect the Falkland Islands and they represent the Government in legal cases. Both are required to be lawyers of several years' experience. As the representative of the Crown (or the public interest), the Attorney-General exercises various civil law functions and has the ultimate responsibility for enforcing the criminal law and, under the Constitution, he has the power to institute or discontinue all types of criminal proceedings. In the exercise of that power, he is not subject to the direction or control of any other person or authority. The Senior Crown Counsel deputizes for the Attorney-General and administers the Government's legal aid scheme on his behalf.

25. Administration of all courts in the Islands is the responsibility of the Chief Justice, assisted by the Senior Magistrate. A Registrar General acts as Registrar or Clerk to the Courts and has responsibility for the registration of deeds affecting land, trade marks, companies, etc.

Criminal proceedings

26. Criminal proceedings are normally instituted by the police in accordance with guidelines established by the Attorney-General. Under those guidelines, complex or difficult cases are referred to the Attorney-General for consideration as to whether any proceedings should be brought. Additionally, where prosecutions have been started without reference to him, the Attorney-General may review the decision taken by the police to commence proceedings and, in appropriate circumstances, may discontinue those proceedings or direct that other charges are brought. The police may issue cautions in certain cases instead of prosecuting. A private person may also institute criminal proceedings but this is subject to the power vested in the Attorney-General to take over and review or discontinue such proceedings. Private prosecutions are in fact rare.

27. Criminal proceedings before the Summary Court and the Magistrate's Court are normally conducted by the Chief Police Officer or the Police Inspector. However, proceedings in the Supreme Court (and certain offences in the Summary Court and Magistrate's Court, most notably those committed under the law relating to fishing in the waters around the Islands) are conducted by the Senior Crown Counsel or the Attorney-General in person.

28. There are, in effect, two categories of criminal offences: those triable only on indictment, i.e. by the Supreme Court, presided over by the Chief Justice (or an acting judge) sitting with a jury; and all other offences. The offences which are triable only on indictment are the more serious ones, such as murder, manslaughter and rape. Other offences are usually tried summarily either by the Summary Court or by the Magistrate's Court. These are also the courts of committal to the Supreme Court when an accused person is charged with an offence which is triable only on indictment or when it is decided that he ought in any event to be so tried.

In addition, the Summary Court and the Magistrate's Court have the power in certain circumstances to order that a person whom they have convicted summarily, but in respect of whom they consider that their sentencing powers are inadequate, should be committed to the Supreme Court for sentence.

29. All criminal courts in the Islands usually sit in open court to which the public and the media are admitted. There are special rules of practice and procedure relating to cases involving persons under 18 years of age. These cases may be heard before the Magistrate's Court or the Summary Court. However, sittings of these courts when dealing with cases of this type are arranged for different times from sittings involving adult defendants. Directions are usually issued to exclude members of the public from attending and media reports may not identify any person under 18 years of age who is appearing either as a defendant or a witness. Where a person under 18 years of age is charged jointly with someone of 18 years of age or over, the case is heard at an ordinary sitting of the relevant court but reporting restrictions may be imposed.

Criminal courts

30. There are three courts which sit in the Islands to deal with criminal matters:

(a) Summary Court

This court, which is established by an Ordinance, consists of one or more (in practice usually three) Justices of the Peace sitting to hear any matters which they are by law empowered to hear. Justices of the Peace are lay persons appointed as described in paragraph 20. There are usually about 21 lay justices in the Islands. The jurisdiction of the Summary Court is limited except where the court consists of two or more justices when it may exercise most of the jurisdiction of the Magistrate's Court which is described below.

(b) Magistrate's Court

The Magistrate's Court is also established by an Ordinance. It is held by the Senior Magistrate. The court has jurisdiction to deal with all offences except those which are triable only on indictment. The vast majority of criminal proceedings are dealt with before this court which has wide sentencing powers.

(c) Supreme Court

The Supreme Court is established by the Constitution. It has unlimited jurisdiction to hear and determine any criminal proceedings. The court consists of the Chief Justice or an acting judge (usually the Senior Magistrate). An acting judge is appointed by the Governor after consultation with the Chief Justice. As explained above, the court deals with the offences which are to be tried on indictment and with the sentencing of offenders committed for sentence by the Summary Court or the Magistrate's Court. It also hears appeals from either the Summary Court or the Magistrate's Court.

Appeals in criminal cases

31. A person convicted by the Summary Court or the Magistrate's Court may appeal to the Supreme Court against his sentence if he pleaded guilty or against both his conviction and his sentence if he pleaded not guilty. The Chief Justice may also, in certain cases and of his own motion, call for and review the record of any proceedings in the Summary Court or the Magistrate's Court to satisfy himself as to the correctness of the proceedings and of any sentence passed. Appeals from the Supreme Court, against conviction or sentence, lie to the Court of Appeal for the Falkland Islands (see below). In certain cases a further appeal lies from the Court of Appeal to the Judicial Committee of the Privy Council.

32. Like the Supreme Court, the Court of Appeal for the Falkland Islands is established by the Constitution. It consists of a President and at least two Justices of Appeal, all of whom are appointed in the same manner as the Chief Justice and must be similarly qualified. The constitutional protection for the Chief Justice's security of tenure of office (see para. 19 above) applies to the members of the Court of Appeal also. The Chief Justice is also an ex officio member of the Court of Appeal except of course, when it is considering an appeal from one of his own decisions.

Trials

33. As in the United Kingdom and as is usual in Common Law systems, criminal trials are "adversarial" in nature. An accused person is presumed innocent until proved guilty and the prosecution must prove his guilt beyond reasonable doubt. The rights of accused persons to a fair trial, with all the necessary procedural and other safeguards, are guaranteed by section 13 of the Constitution which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights. Section 3 of the Constitution sets out the safeguards for persons in custody and specifically for those detained in connection with possible criminal proceedings. A machinery for enforcing these provisions is provided by section 16 of the Constitution (see para. 44 below.) In conformity with the foregoing, a defendant has the right to consult with and be represented by a legal adviser and he may be granted financial assistance, from a legal aid scheme run by the Government, to meet his costs. The prosecution usually informs the defence of the nature of any evidence which the prosecution is likely to adduce and also of witnesses whose evidence may be relevant but whom the prosecution does not propose to call. If, at the instance of either the defence or the prosecution, the court finds the defendant unfit to plead, by reason of his mental condition, he may be admitted to secure accommodation at the Islands Hospital.

34. Criminal trials normally follow the procedure adopted by criminal courts in England and Wales. As noted above, trials are normally in open court. The rules of evidence are rigorously applied and, if evidence is improperly admitted, a conviction may be quashed on appeal. During the trial, and as required by the Constitution, the defendant has the right to hear and cross-examine witnesses for the prosecution, normally through a lawyer. The defence has the right to the last speech at the trial. The defendant cannot be questioned without consenting to be sworn as a witness in his own defence. When he does testify, cross-examination about his character or other conduct not relating to the offence charged may be made only in exceptional circumstances: generally the prosecution may not introduce such evidence.

Jury trials

35. The vast majority of cases in the Islands are dealt with summarily - i.e. without a jury. Offences which are tried on indictment in the Supreme Court are tried by a judge and jury. Where there is a jury, the judge decides questions of law, sums up the evidence for the jury and instructs it on the relevant law. It is then for the jury to decide whether the prosecution has proved beyond reasonable doubt that the defendant is guilty. If not, it must find him not guilty. In the Falkland Islands, verdicts of the jury must be unanimous. If the jury returns a verdict of "not guilty", the prosecution has no right of appeal and the defendant is acquitted by the judge and cannot be tried again for the same offence. In the event of a "guilty" verdict, the defendant is sentenced and has a right of appeal to the appropriate court.

36. A jury is completely independent of the judiciary and it is a criminal offence to interfere with a jury once it has been sworn.

37. Both the prosecution and the defence have the right to challenge up to six jurors in certain cases without giving any reason. Both the prosecution and the defence may challenge any other potential juror by giving reasons for believing that he is likely to be biased.

38. Persons between the ages of 21 and 60 years whose names appear on the electoral register for the Islands, with certain exceptions, are liable for jury service. They are chosen for such service at random. Certain persons (such as members of the judiciary, other members of the legal profession, priests and police officers) are exempt from jury service. Persons convicted of serious crime are disqualified from jury service.

Coroner's Court

39. The Senior Magistrate is the Coroner for the Islands by virtue of his office. In his absence, the Attorney-General or a person acting as Attorney-General may sit as a Coroner. It is the duty of the Coroner to investigate violent and unnatural deaths or sudden deaths where the cause is unknown. The deaths are normally reported to the Coroner by doctors or the police. If the death is sudden and the cause unknown, the Coroner need not hold an inquest if, after a post-mortem examination has been made, he is satisfied that the death was due to natural causes. Where there is reason to believe that the deceased died a violent or unnatural death or died in prison or in other specified circumstances, the Coroner must hold an inquest and it is the duty of the Coroner's Court to establish how, when and where the deceased died. A Coroner may sit alone or, in certain circumstances (e.g. where death occurs in police custody), with a jury.

Civil proceedings

40. The same three courts which exercise criminal jurisdiction in the first instance also have jurisdiction to deal with civil matters.

(a) Summary Court

The Summary Court, when consisting of two or more Justices of the Peace, has a limited civil jurisdiction but, in practice, most civil proceedings are commenced in the Magistrate's Court unless the law requires that they be commenced in the Supreme Court. The Summary Court has specific jurisdiction to deal with proceedings involving disputes between employers and employees.

(b) Magistrate's Court

The Magistrate's Court has jurisdiction to deal with a wide range of civil matters. Actions founded upon contract and tort, trust and mortgage cases, and actions for the recovery of land may all be dealt with in the Magistrate's Court. In most cases, claims must not exceed the statutory limit (currently £50,000). However, proceedings may be pursued in the Magistrate's Court even where the amount exceeds the statutory limit if the parties agree.

(c) Supreme Court

The Supreme Court has unlimited jurisdiction to hear and determine any civil proceedings. As well as dealing with those matters where the amount claimed is above the statutory limit, it exercises exclusive jurisdiction in admiralty matters and in cases relating to defamation, divorce, wardship and proceedings for judicial review.

41. All courts normally hear civil matters without the assistance of a jury. However, there are circumstances in which the court may, exceptionally, order a trial with a jury.

Appeals in Civil Cases

42. Appeals in civil cases from both the Summary Court and the Magistrate's Court lie to the Supreme Court. Appeals from the Supreme Court lie to the Court of Appeal for the Falkland Islands and from that court to the Judicial Committee of the Privy Council.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Authorities having jurisdiction affecting human rights

43. Chapter I of the Constitution (sects. 1-17) provides the basic legal framework for ensuring the protection of the fundamental rights and freedoms of every person in the Falkland Islands. This chapter, in sections 1 to 15, contains legally enforceable provisions ensuring protection of the right to life, protection of the right of personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection of freedom of movement, protection from deprivation of property, protection from arbitrary search or entry,

protection of freedom of conscience, protection of freedom of expression including the freedom of the press, protection of freedom of assembly and association, and protection from discrimination on the grounds of race, sex, etc., and also ensuring the protection of the law (which covers the right to a fair trial, and all related safeguards, in both criminal and civil matters).

44. Section 16 of the Constitution confers on any person who alleges that any of the provisions of sections 1 to 15 has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, on any other person who also alleges such a contravention in relation to the detained person) the right to make direct application to the Supreme Court for redress. Under section 16 the Supreme Court has power to hear and determine any such application and to make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the relevant provisions. Moreover, if a question as to the contravention of any of the provisions of sections 1 to 15 arises in any subordinate court, that court may (and must if any party so requests) refer it for determination to the Supreme Court and must then dispose of the case in accordance with that determination. An appeal lies as of right to the Court of Appeal (and thence, with the leave of the Court of Appeal, to the Judicial Committee of the Privy Council) from any decision of the Supreme Court under section 16.

45. In addition to the specific right of action given under section 16 of the Constitution, many infringements of the fundamental rights and freedoms protected by the Constitution will found alternative causes of action in the courts. Section 16 expressly does not prejudice these other remedies. For example, a person unlawfully deprived of his personal liberty may bring, or have brought on his behalf, civil proceedings to secure his release (by making application for a writ of habeas corpus). In addition, he may bring an action for damages for false imprisonment, wrongful arrest, or assault or for other violations of his civil rights, depending on the facts.

B. Remedies, compensation and rehabilitation

46. There is no provision in Falkland Islands law expressly conferring a right to compensation or rehabilitation on the victim of a human rights violation. However, as noted above, such a person, in addition to his ability in all cases to secure relief under section 16 of the Constitution, may have a number of remedies available to him under the ordinary law by virtue of which he could obtain damages for the infringement of his ordinary civil rights.

Legal aid

47. A legal aid scheme is available in the Islands whereby a person in need of legal advice or legal representation in court may have his legal costs paid out of public funds. Monies for the scheme are approved at the commencement of each financial year. The scheme is administered by the Government's Senior Crown Counsel on behalf of the Attorney-General.

48. Eligibility for assistance under the scheme depends upon the level of the applicant's income and the value of his personal assets (excluding his principal private dwelling house). Once an applicant is eligible under the scheme, he is covered for legal expenses up to specified

limits in connection with many legal issues including alleged denials or infringements of fundamental rights and freedoms. The specified limits may be extended by agreement with the Attorney-General.

Compensation for wrongful convictions/detentions and for victims of crimes

49. There are no statutory schemes established in the Islands covering the payment of compensation to persons who have been wrongfully convicted or detained or to victims of crime. However, there would be civil remedies available in many such cases and the courts have statutory power to make compensation orders in appropriate criminal cases.

General

50. In the circumstances of the Falkland Islands, there are, in fact, very few recorded instances of serious violent crime. Persons who are accused of offences but have not been convicted are, subject to certain exceptions, automatically granted bail in accordance with section 81 of the Criminal Justice Ordinance 1989 and, in practice, it is extremely unusual for any unconvicted defendant in criminal proceedings to be held in custody. Practical considerations such as these have so far made it unknown for anybody to choose to commence proceedings based on breach of constitutionally protected rights and freedoms.

C. Constitutional protection of human rights: derogations, etc.

51. As explained in paragraph 43 above, chapter I of the Constitution of the Falkland Islands guarantees and protects the fundamental rights and freedoms of the individual. This chapter derives directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. The rights and freedoms specified in it are subject only to the limitations which are also specified and which are designed to ensure that the enjoyment of his rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. Section 14 of the Constitution permits a law to authorize measures to be taken which derogate from certain specified provisions of chapter I during a period of public emergency but only to the extent that those measures are reasonably justifiable for dealing with the situation that then exists. Whether the measures actually taken are so justifiable is a question that can ultimately be determined by the courts.

D. Effect of human rights instruments in national law

52. Under the Common Law system which operates in the Falkland Islands, treaties which apply to the Islands (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation - this could be by an ordinance enacted locally or by an order in council made by the United Kingdom Government - or to amend existing legislation or to

adapt existing administrative practices, as the case may require. Where this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is threat of such action), a remedy will be available in the courts through the ordinary procedures civil litigation or, in some cases, by criminal sanctions.

IV. INFORMATION AND PUBLICITY

53. The texts of United Nations human rights instruments to which the United Kingdom Government is a party in respect of the Falkland Islands are available in the Islands and person who request copies can obtain them through either Government House (the Governor's office) the Attorney-General's Chambers. At the current time, consideration is being given to the preparation and publication of a public information paper to raise public awareness of human rights instruments applicable to the Islands.

Annex VI

GIBRALTAR

I. LAND AND PEOPLE

1. Gibraltar is a narrow peninsula extending southward at the southernmost tip of Western Europe and overlooking the Straits of Gibraltar, the North African coast and Spain. A main feature of Gibraltar is the Rock which runs from north to south for a length of nearly three miles. It is three quarters of a mile wide and has a total area of 23 square miles. The highest point is 1,396 ft. above sea level. The total civilian population of Gibraltar is approximately 30,000, of whom just over 20,000 are native Gibraltarians. English is the official language but most Gibraltarians are fluent in English and Spanish.

2. Background statistical information, using the most up-to-date figures available, is as follows:

Per capita income	£10 620	
Gross national product	£278 million	
Rate of inflation	1.7 per cent (1993-1994)	
External debt	Net public sector debt 23.8 million (1991-1992)	
Rate of unemployment	14 per cent	
Literacy rate	Not available - assumed to be nearly 100 per cent	
Population	28 074 (Census of Gibraltar October 1991)	
Percentage of population speaking English as mother tongue	90 per cent	
Life expectancy	Males Females	73.4 (1991) 80.4 (1991)
Infant mortality rate	5.7 per 1 000	
Maternal mortality rate	Not available	
Fertility rate	Not available	
Percentage of population under 15 and over 65 years of age	Males under 15 Females under 15 Males over 65 Females over 65 (1990)	- 11.28 per cent - 10.1 per cent - 4.8 per cent - 8.0 per cent

Percentage of population in rural areas and in urban areas	Not applicable
Percentage of households headed by women	Not available

II. GENERAL POLITICAL STRUCTURE

A. System of government

3. Gibraltar is a British Dependent Territory.

4. The Gibraltar Constitution came into force in August 1969 and is contained in the Gibraltar Constitution Order 1969. A copy is provided as appendix 1.

5. Chapter I of the Constitution contains provisions which guarantee the protection of fundamental rights and freedoms of the individual. This chapter is discussed in more detail in Part III below.

6. The main features of the Constitution, apart from chapter I, are as follows:

(a) The Governor is appointed by the Queen on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs, to whom he is accountable. There is also a Deputy Governor, similarly appointed. Executive authority is vested in the Governor but, except in certain specified cases, he is required, in exercising his functions, to consult either the Council of Ministers (in relation to "defined domestic matters") or the Gibraltar Council. ("Defined domestic matters" include such matters as trade and industry, education, economic development, and public works and services.) The Council of Ministers consists of the Chief Minister and not less than four nor more than eight other Ministers. Its meetings are summoned, and usually presided over, by the Chief Minister. The Chief Minister is the elected member of the House of Assembly who appears to the Governor to be most likely to command the support of the majority of the elected members, and the other Ministers are elected members, and the other Ministers are elected members of the Assembly whom the Governor appoints as Ministers after consultation with the Chief Minister. The Gibraltar Council consists of the Deputy Governor, the Deputy Fortress Commander, the Attorney-General and the Financial and Development Secretary, together with the Chief Minister and four other Ministers designated by the Governor after consultation with the Chief Minister. As a rule, the Governor summons and presides over its meetings. With certain limited exceptions, the Governor must act in accordance with the advice of the Council of Ministers when he has consulted it on a defined domestic matter. In general, he is not required to act in accordance with the advice of the Gibraltar Council after consulting it but would usually do so (and must report to the Secretary of State if he does not). The Governor appoints, removes and exercises disciplinary control over public officers, but he is assisted in the exercise of these powers by the advice of a Public Service Commission established by the Constitution.

(b) The Legislature consists of the Governor and a House of Assembly. The House of Assembly consists of a Speaker (who is not an elected member but is appointed by the Governor after consultation with the Chief Minister and the Leader of the Opposition); the Attorney-General and the Financial and Development Secretary, as ex officio members; and 15 elected members. The Speaker has no vote and the ex officio members may not vote on a motion of confidence or no-confidence. The Assembly has the power to make laws on any subject. It does so in the form of bills which, when passed, are presented to the Governor for his assent. When he has assented to them, they become law as ordinances. In exercising this function of assenting (or not), the Governor must of course apply the provisions, described above, concerning the advice of the Council of Ministers or the Gibraltar Council. In practice, it is very rare for him to refuse to assent to a bill passed by the Assembly. He also has a limited reserve power to introduce legislation into the House of Assembly and have it enacted without the consent of the majority of the members of the House if it does not involve defined domestic matters, and he has an even more limited power to do so on defined domestic matters when he considers that the financial and economic stability of Gibraltar so requires. Formally, the Queen, on the advice of the Secretary of State, may disallow ordinances. The United Kingdom Government retains the power to legislate for Gibraltar by Act of Parliament or by Order in Council. The maximum life of each Assembly is four years but it may be dissolved earlier by the Governor acting after consultation with the Chief Minister. Sessions must be held at least every 12 months. The writs for a general election must be issued within 60 days of any dissolution of the Assembly, and the first session of the next Assembly must begin within 30 days of the polling day at that general election.

(c) Only persons who are registered voters may vote in elections to the Assembly The qualifications and disqualifications of voters and the procedure at elections are prescribed in an ordinance. The qualifications and disqualifications of candidates for election are prescribed in the Constitution itself. In Gibraltar politics, it is usual for parties to put forward the candidates for election but there is nothing to prevent individual candidates from standing as independents. Currently, eight of the elected members form the Government party in the Assembly while the remaining seven elected members form the Opposition.

(d) The judicial and legal system is described in more detail below. Chapter V of the Constitution contains provisions regulating the Supreme Court, the Court of Appeal and appeals to the Judicial Committee of the Privy Council, and section 77 (in chap. VIII) defines the functions of the Attorney-General in relation to the institution and conduct of criminal proceedings and protects his independence in carrying out those functions.

B. Europe

7. Under article 227 (4) of the Treaty Establishing the European Community, that Treaty applies to Gibraltar as a European territory for whose external relations the United Kingdom is responsible. Subject to certain exceptions set out in article 28 of the Act of Accession of 1972, Community law therefore applies to Gibraltar. Under Gibraltar's European Communities Ordinance 1972, European Community Regulations and directly effective Community obligations automatically have legal effect in Gibraltar while Community Directives fall to be implemented by local legislation.

C. Religion

8. Freedom of religion is expressly protected by section 9 of the Constitution.

D. History

9. The Greek philosopher, Plato, mentions the pillars of Hercules with reference to Calpe (Gibraltar) which dominates the Straits. The Romans called Gibraltar Mons Calpe but they did not establish a town there. It was not until 711 that Tarik Ibn Zeyad, a Berber who embarked upon the conquest of Spain, landed at the southern end of the Rock, and the town of Gibraltar eventually grew from then. The invasion of the Iberian Peninsula had begun and, gradually, practically the whole of Iberia was overrun. For over six centuries, with a short break from 1309 to 1333, Gibraltar remained under Moorish occupation. Fortifications were built during that period but no town existed until 1160.

10. Gibraltar was reconquered from the Moors by Spanish forces in 1462. Gibraltar remained a Spanish possession until the beginning of the eighteenth century. During the War of the Spanish Succession (1702-1713) the Rock of Gibraltar became a pawn in the struggle between the two rival claimants to the Spanish throne, Philip V and Charles III. Held by forces loyal to the former, Gibraltar fell in 1704 to a combined Anglo-Dutch force supporting the latter. By the Treaty of Utrecht, which ended the conflict and was signed in 1713, Gibraltar was yielded to the Crown of Great Britain "for ever". Spain subsequently laid siege to Gibraltar on a number of occasions, the most important ones being in 1727 and 1779.

11. During the course of the nineteenth century Gibraltar developed into a fortress of renowned impregnability - the phrase "as safe as the Rock" became commonplace in the English language. At the same time, a civilian community grew up within its walls, earning its living primarily from commercial activities. In 1830, responsibility for Gibraltar's affairs was transferred from the War Office to the Colonial Office. In that same year, a new Charter of Justice created a judiciary independent of the Governor's executive and legislative powers. Increasing civilian participation in local affairs came with the establishment of Sanitary Commissioners in 1865 and the creation of a City Council in 1921. At the turn of the century Gibraltar entered a new phase in its history: it became an important naval base, and a modern dockyard and harbour were developed.

12. Twice during the first half of the twentieth century the value of Gibraltar as a strategic naval base was proved. In both the 1914-1918 and 1939-1945 wars, Gibraltar was of key strategic value and a key point in the anti-submarine campaign. During the latter war the bulk of Gibraltar's civilian population was evacuated for security reasons; most went to Britain, Madeira and Jamaica. Gibraltar underwent dramatic changes over the war years. The airport was constructed then and so was a complex "underground" network of tunnels and chambers within the Rock.

13. After the war there was a growing demand by certain sections of the civilian population for greater self-government. The Association for Advancement of Civil Rights was formed during the war, and in 1945 the City Council was reconstituted, for the first time with an elected majority. The Governor's monopoly of legislative authority ended five years later with the

institution of a new Constitution which provided for the formation of a Legislative Council. The post-war years were also marked by considerable expansion in the social and economic spheres. Medical, education, housing and social security services were developed.

14. In 1963, the question of Gibraltar's status came for the first time before the United Nations Special Committee on Decolonization, and Spain revived her claim for the reversion of the Rock to Spanish sovereignty. As a result, constitutional discussions were held with Gibraltarian representatives and a new Constitution, which created the Gibraltar Council and the Council of Ministers, was introduced and came into force in July 1964. Elections followed in August 1964.

15. Throughout the 1960s, Spanish territorial claims were accompanied by increasing restrictions at the border between Spain and Gibraltar, culminating in 1969 in the complete closure of the frontier and the withdrawal of all other means of direct communication between the two countries.

16. Following a popular referendum in 1967 and further constitutional talks in 1968, Gibraltar was granted a new Constitution in 1969 by which the functions of the Legislative Council and the City Council were merged and a Gibraltar House of Assembly was established. The intention of the new Constitution was to provide self-government in domestic matters.

17. As explained in paragraph 7 above, the United Kingdom's accession to the European Community in 1972 entailed the application of Community law to Gibraltar with certain exceptions. These relate principally to the collection and harmonization of turnover tax, the customs union and the Common Agricultural and Fisheries Policies.

18. The Spanish border with Gibraltar was fully reopened in 1985, and in the latter part of the 1980s and early 1990s there has been an increase in tourism and investment and a considerable expansion in residential and commercial facilities including land reclamation projects.

E. The law

Administration

19. The courts structure consists of the Magistrates Court, the Court of First Instance, the Supreme Court, the Court of Appeal and the Judicial Committee of the Privy Council, and also a Coroner's Court. Their composition and jurisdiction are described in more detail below.

20. The Gibraltar judiciary are totally independent of the Government. They are not subject to direction or control from the Governor, the Gibraltar Council, the Council of Ministers, the House of Assembly or any Minister or official or any member of the Assembly. The tenure of office, and thus the independence, of the senior judges is expressly entrenched in the Constitution.

21. The Chief Justice has the responsibility for the administration of justice and of all courts in Gibraltar. He is appointed by the Governor on instructions from the Secretary of State and is removable, during his ordinary term of office, only for proven misconduct or incapacity as established by a judicial tribunal. He must be a person who is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland or who has been qualified for at least 10 years to practise before such a court. The Governor may also appoint an additional judge of the Supreme Court if the need arises, for example, if the Chief Justice is absent or if pressure of work requires. He, too, is protected against removal during the term for which he was appointed. There are also a Stipendiary Magistrate and Justices of the Peace who are appointed by the Governor. The Stipendiary Magistrate is ex officio the Coroner. There is also a Registrar who acts as the clerk to the courts and has various administrative functions, for example, in relation to the registration of deeds affecting land. He is also the Admiralty Marshall.

22. The Governor is responsible for the police and the prison. He is assisted in this by a Police Complaints Board, whose members include representatives of the community and which investigates and advises in relation to aspects of policing, and by a Prison Board, which is obliged to meet at least eight times each year to receive complaints from prisoners and to visit and inspect the prison. The Board must report to the Governor any findings of concern.

23. The Attorney-General, a Senior Crown Counsel and other Crown Counsel are the Government's advisers on most legal issues which affect Gibraltar and they represent the Crown in legal cases. The Attorney-General has ultimate responsibility for enforcing the criminal law and, under the Constitution, has the power to institute or discontinue all types of criminal proceedings. In exercising that power, he is not subject to the direction or control of any other person or authority.

Criminal proceedings

24. It is normally the police who institute criminal proceedings. They do so in accordance with guidelines established by the Attorney-General. Complex cases are referred to the Attorney-General for consideration and advice as to whether any proceedings should be brought. Where prosecutions have been started without reference to the Attorney-General, he may review the decision taken by the police to institute proceedings and may direct that alternative charges be brought or may discontinue those proceedings. The police may issue cautions in certain cases instead of prosecuting. Criminal proceedings before the Magistrates Court are normally conducted by a police inspector or chief police officer.

25. There are, in effect, two categories of criminal offences: those triable only on indictment, i.e. by the Supreme Court presided over by the Chief Justice (or an additional judge) sitting with a jury; and all other offences. The offences which are triable only on indictment are the more serious offences, such as murder, manslaughter, rape, robbery and drug trafficking. Other offences can be, and usually are, tried summarily by the Magistrates Court (though some of these are "triable either way", i.e. it can be decided, in certain circumstances, that they are to be tried on indictment). The Magistrates Court is also the court of committal to the Supreme Court when

an accused person is charged with an offence which is triable only on indictment or when it is decided that he ought in any event to be so tried. In addition, the Magistrates Court has the power in certain circumstances to order that a person whom it has convicted summarily, but in respect of whom it considers it sentencing powers to be inadequate, should be committed to the Supreme Court for sentence.

26. The criminal courts in Gibraltar usually sit in open court to which the public and the media are admitted. Special rules of practice and procedure apply to cases involving persons under 18 years of age. These cases are heard before the Juvenile Court, sitting at the Magistrates Court. Sittings of this Court are arranged so as to be held at different times from sittings involving adult defendants. Members of the public are usually excluded from attending and media reports may not identify any person under 18 years of age who is appearing as a defendant. Where a person under 18 years of age is charged jointly with someone of 18 years of age or over, the case is heard at an ordinary sitting of the relevant court but reporting restrictions may be imposed.

Criminal courts

27. There are two courts which sit in Gibraltar to deal with criminal matters:

1. Magistrates Court

The Magistrates Court, which is established by Ordinance, consists of, and is held before, either the Stipendiary Magistrate (i.e. a salaried, qualified lawyer) or lay Justices of the Peace (who are advised on points of law and procedure by a Magistrates' Clerk). It has jurisdiction to deal with all offences except those which are triable only on indictment. The vast majority of criminal proceedings are dealt before this court. When it is not held by the Stipendiary Magistrate the court consists of two or more (usually three) Justices sitting to hear any matter which by law they are empowered to hear.

2. Supreme Court

The Supreme Court is established by the Constitution. It has unlimited jurisdiction to hear and determine any criminal proceedings. The Court consists of the Chief Justice and any additional judge. The Court deals with serious indictable offences or offences "triable either way" which it has been decided ought to be tried on indictment; with the sentencing of offenders committed for sentence by the Magistrates Court; and with appeals from the Magistrates Court. Contested trials in this Court take place before a jury.

Appeals in criminal cases

28. A person convicted by the Magistrates Court may appeal to the Supreme Court against his sentence if he pleaded guilty or against both his conviction and sentence if he pleaded not guilty. Appeals from the Supreme Court, against conviction or sentence, lie to the Court of Appeal and in certain cases a further appeal lies to the Judicial Committee of the Privy Council.

29. Like the Supreme Court, the Court of Appeal is established by the Constitution. It consists of a President and two or more (at present three) Justices of Appeal; and the Chief Justice is also an ex officio member of the Court except when it is dealing with an appeal from one of his own decisions. The President and the Justices of Appeal are appointed in the same way as the Chief Justice and their security of tenure of office is also protected in the same way.

Trials

30. As is usual in Common Law systems, criminal trials are "adversarial" in nature. The innocence of an accused person is presumed until the prosecution have proved his guilt beyond reasonable doubt. The rights of accused persons to a fair trial, with all the necessary procedural and other safeguards, are guaranteed by section 8 of the Constitution which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights. Section 3 sets out the safeguards for persons in custody and specifically for those detained in connection with possible criminal proceedings. The enforcement machinery for these provisions is established by section 15 of the Constitution (see para. 38 below). In conformity with the foregoing, a defendant has the right to consult and be represented by a lawyer and, if he cannot himself afford to employ a lawyer, he may be granted legal assistance out of the Government's legal aid scheme. It is the usual practice for the prosecution to inform the defendant or his lawyer of the nature of any evidence which the prosecution is likely to adduce and also of witnesses whose evidence may be relevant but whom the prosecution does not propose to call. If, at the instance of either the defence or the prosecution, the court finds the defendant unfit to plead by reason of his mental condition, he may be admitted to secure accommodation at a Gibraltar mental institution.

31. The procedure for criminal trials follows the procedure adopted in England and Wales and continues to include committal proceedings. As mentioned above, trials are normally in open court. The rules of evidence are rigorously applied; and if evidence has been improperly admitted, a conviction may be quashed on appeal. At the trial, and as required by the Constitution, the defendant has the right to cross-examine witnesses for the prosecution, normally through a lawyer, and to call his own witnesses. If witnesses do not attend voluntarily, they may be legally compelled to attend. The defendant cannot be questioned without consenting to be sworn as a witness in his own defence. If he testifies, cross-examination about his character or other conduct not relating to the offence charged may be made only in exceptional circumstances.

Jury trials

32. As noted above, the vast majority of cases in Gibraltar are dealt with summarily without a jury. Offences which are tried in the Supreme Court on indictment are tried before a judge and jury. Where there is a jury, the judge decides questions of law, sums up the evidence for the jury and instructs it on the relevant law. The jury then determines whether the prosecution has proved beyond reasonable doubt that the defendant is guilty. If not, it must find him not guilty. A jury is normally comprised of 9 persons but 12 are required for a murder trial. Verdicts of the

jury must be unanimous in a murder trial, but a majority of 7 is sufficient in other trials. The jury is completely independent of the judiciary and it is a criminal offence to interfere with a jury once it has been sworn.

33. Both the prosecution and the defence may challenge any potential juror by giving reasons for believing that he is likely to be biased. Persons between the ages of 18 and 65 years whose names appear on the electoral register in Gibraltar are liable for jury service. Certain persons, such as members of the judiciary, other members of the legal profession, priests, police officers and women (unless they volunteer), are exempt from jury service. Persons with previous convictions for certain crimes are disqualified from jury service.

Coroner's Court

34. The Stipendiary Magistrate is the Coroner for Gibraltar by virtue of his office. The Coroner has the duty to investigate unnatural or violent deaths or deaths where the cause is unknown. Deaths are normally reported to the Coroner by doctors or the police. If a post-mortem examination has been made and the Coroner is satisfied that the death was due to natural causes, he need not hold an inquest. If, on the other hand, there is reason to believe that the deceased died a violent or unnatural death or died in a prison, the Coroner has a duty to establish how, when and where he died and must therefore hold an inquest.

Civil proceedings

35. There are two civil courts in Gibraltar, the Court of First Instance and the Supreme Court.

(a) Court of First Instance

The jurisdiction of the Court of First Instance embraces routine civil claims, for example, in contract or tort, where the debt, demand or damage claimed is not more than £1,000, whether on balance of amount or otherwise.

(b) Supreme Court

The Supreme Court has unlimited jurisdiction to hear and determine any civil proceedings. As well as dealing with cases otherwise within the jurisdiction of the Court of First Instance but where the amount claimed is above the £1,000 limit of that Court, the Supreme Court exercises jurisdiction in Admiralty matters and in cases relating to divorce, judicial review and defamation. Civil matters in the Supreme Court are normally heard without the assistance of a jury, though in exceptional circumstances a trial with a jury may be required.

Appeals in civil cases

36. Appeals in civil matters lie from the Court of First Instance to the Supreme Court and from the Supreme Court to the Court of Appeal. In certain cases an appeal may lie from the Court of Appeal to the Judicial Committee of the Privy Council.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

Authorities having jurisdiction affecting human rights

37. Chapter I of the Constitution (sects. 1-17) provides the basic legal framework for ensuring the protection of the fundamental rights and freedoms of every person in Gibraltar. This chapter (in sects. 1-14) contains legally enforceable provisions ensuring the protection of the right to life, protection of the right to personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection of freedom of movement, protection for privacy of the home and other property, protection from deprivation of property, protection of freedom of conscience, protection of freedom of expression, including the freedom of the press, protection of freedom of assembly and association, protection of freedom to establish schools, and protection from discrimination on the grounds of race, sex, religion, etc., and also ensuring the protection of the law (which covers the right to a fair trial, and all related safeguards, in both criminal and civil matters).

38. Section 15 of the Constitution confers on any person who alleges that any of the provisions of sections 1 to 14 has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, or any other person who alleges such a contravention in relation to the detained person) the right to make direct application to the Supreme Court for redress. The Supreme Court has power to hear and determine any such application and to make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of securing the enforcement of the relevant provisions.

39. In addition to the specific remedy provided by section 15 of the Constitution, a person whose fundamental rights and freedoms have been infringed may have alternative legal remedies available to him, and section 15 expressly does not prejudice their availability. For example, if a person has been deprived of his personal liberty, he may bring civil proceedings to secure his release by making an application for a writ of habeas corpus. He may also sue for damages for false imprisonment, wrongful arrest, assault or for other violations of his civil rights, depending on the facts of the case.

Compensation, rehabilitation, etc.

40. There is no provision in Gibraltar law expressly conferring a right to compensation or rehabilitation on the victim of a human rights violation. However, as noted above, such a person, in addition to his ability in all cases to secure relief under section 15 of the Constitution, may have a number of remedies available to him under the ordinary law through which he could obtain damages for the infringement of his ordinary civil rights. Moreover, the courts have a statutory power in criminal cases to order a convicted offender to pay compensation to the victim of his offence for personal injury, loss or damage resulting from that offence.

41. There is also no provision expressly conferring a right to compensation for having been held in custody in connection with criminal proceedings which eventually result in an acquittal. In practice that situation very rarely arises since, with some exceptions, accused persons are granted bail under the Criminal Procedure Ordinance.

Constitutional protection of human rights: derogations, etc.

42. As explained above, chapter I of the Constitution of Gibraltar guarantees and protects the fundamental rights and freedoms of the individual. This chapter derives directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. The rights and freedoms specified in it are subject only to the limitations which are also specified and which are designed to ensure that the enjoyment of his rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. Section 16 of the Constitution permits certain laws to authorize measures to be taken which derogate from specified provisions of chapter I during a period of public emergency but only to the extent that those measures are reasonably justifiable for dealing with the situation that then exists. Whether the measures actually taken are so justifiable is a question that can ultimately be determined by the courts.

Effect of human rights instruments in national law

43. Under the Common Law system which operates in Gibraltar, treaties (including human rights treaties) which apply to Gibraltar do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation - this could be by an ordinance enacted locally or by an order in council made by the Queen in Council on the advice of the Secretary of State - or to amend existing legislation or to adapt existing administrative practices, as the case may require. Where this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation or, in some cases, by criminal sanctions. Where, by virtue of Gibraltar's status in relation to the European Community (see para. 7 above), a relevant right derives from a provision of Community law which has direct effect, it would, exceptionally, be enforceable in the Gibraltar courts without the interposition of further legislation.

Machinery for overseeing and protecting human rights

44. There are no institutions or machinery, other than the courts, charged with the specific responsibility of overseeing the implementation of human rights. However, it is well understood in Gibraltar that, if complaints of human rights violations (or of any other form of abuse of power or maladministration) are raised either by the exercise of the relevant statutory right of appeal or by way of general complaint to the executive government and they appear to have substance, they will be investigated thoroughly. In addition, there are a number of private legal practitioners in Gibraltar through whom such a complaint could be pursued. In appropriate cases

the legal machinery of the European Union or of the European Commission of Human Rights and the European Court of Human Rights could be invoked to secure the implementation of rights deriving from European law or from the European Convention on Human Rights.

IV. INFORMATION AND PUBLICITY

45. The texts of United Nations human rights instruments to which the United Kingdom Government is a party in respect of Gibraltar are available in Gibraltar and persons who request copies can obtain them through the Government Secretariat, or the Office of the Deputy Governor or the Attorney-General's Chambers.

Annex VII

MONTSERRAT

I. LAND AND PEOPLE

1. Background statistical information, using the most up-to-date figures available, is as follows:

Per capita income	EC$ 12 704 (1991)
GDP	EC$ 135.16 million (1991)
Rate of inflation	2.2 per cent (year end 1992)
External debt	EC$ 31 million (1992)
Rate of unemployment	10 per cent (1992)
Literacy rate	90 per cent (1992)
Percentage of population speaking English as mother tongue	Not available - assumed to be approximately 100 per cent
Life expectancy	The life expectancy of Montserratians is relatively high. Over 70 per cent of deaths occur in the 65+ age group with a great number of women living to a "ripe" old age (i.e. 90+)
Infant mortality rate	6.6 per 1 000 (1994)
Maternal mortality rate	Nil (1994 and 1995)
Fertility rate	1.8 (1992)
Population	Between 10 000 and 12 000 depending on the time of year
Percentage of population under 15 and over 65 years of age	Males under 15 years of age 27.2 per cent and females 25.3 per cent. Males over 65 years of age 11.4 per cent and females 15.6 per cent (1991 census)

Percentage of population in rural areas and urban areas	Rural 90.7 per cent and urban 9.3 per cent (1991 census)
Percentage of households headed by women	39.5 per cent (1991 census)
Religion	The most common religion is Christian. Anglicans make up 26.8 per cent of the population, Methodists 19.56 per cent, Pentecostals 14.85 per cent, Roman Catholics 13.13 per cent and Seventh Day Adventists 11.84 per cent. The remaining 14.34 per cent is divided among eight other denominations (1991 census)

II. GENERAL POLITICAL STRUCTURE

A. System of government

2. Montserrat is a British Dependent Territory.

3. The present Constitution is contained in Schedule 2 to the Montserrat Constitution Order 1989, a copy of which is provided as appendix 1. Part IV of the Constitution (which is discussed in more detail below) contains provisions which guarantee the fundamental rights and freedoms of the individual.

4. The main features of the Constitution, apart from Part IV, are as follows. It provides for a "Westminster style" form of Parliamentary government, with a Governor (representing the Crown), an Executive Council (corresponding to the Cabinet) and a largely elected legislature, the Legislative Council, from which the Executive Council is drawn and to which it is accountable (and by which it may, in effect, be dismissed).

The Executive

5. The Governor, in whom executive authority is formally vested, is appointed by the Queen on the advice of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom to whom he is responsible for the exercise of those of his functions which the law does not require him to exercise on the advice of some other authority. In general, however, he is required to consult the Executive Council in the exercise of his functions and to act on its advice. But he retains direct responsibility for (and need not consult or act on the advice of the Executive Council in relation to) certain matters such as defence, external affairs, international financial services, internal security (including the police) and the public service.

6. The Executive Council, at whose meetings the Governor usually presides, consists of the Chief Minister and three other Ministers, and also the Attorney-General and the Financial Secretary as ex officio members. The Chief Minister is the elected member of the Legislative

Council whom the Governor judges to be most likely to command the confidence of a majority of the elected members of that Council. The other Ministers are chosen by the Chief Minister from among the elected or nominated members of the Legislative Council.

The Legislative Council

7. The Legislative Council consists of seven elected members, two nominated members and also the Attorney-General and the Financial Secretary as ex officio members. Every person who is a Commonwealth citizen, is at least 21 years old and either has resided in Montserrat for the 12 months immediately preceding his nomination for election or is then domiciled and resident in Montserrat is qualified to be elected to the Legislative Council unless he is subject to one of a number of specified disqualifications (for example, if he is a public officer or is of unsound mind or has been convicted of an offence connected with the conduct of elections). There is also a Speaker who is chosen by the Council from outside its own members but who must himself possess the prescribed qualifications for election. Voting is normally by simple majority but a vote of no confidence (which results either in the dismissal of the Ministers or in the dissolution of the Legislative Council, followed by a general election) requires the support of a majority of all the elected members and only they may vote.

8. The Legislative Council may make laws on any subject. It exercises this power by passing bills which are then presented to the Governor for his assent. He may then, in accordance with the usual rules governing how he exercises his functions, either assent to them or (though this could rarely arise in practice since most legislation is government legislation) refuse assent or reserve them for decision by the Secretary of State. There are certain categories of bills (especially those affecting his own responsibilities, for example, for defence, external affairs, etc.) which the Constitution requires him to reserve. Formally, all laws assented to by the Governor may be disallowed by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate for Montserrat by Act of Parliament or Order in Council.

9. The Constitution provides that not more than three months may elapse between sessions of the Legislative Council, and the Standing Orders of the Council require meetings to be held, during sessions, at least once in every two months. (If the Council has not been earlier dissolved by the Governor, acting after consultation with the Chief Minister (for example, after a vote of no confidence), it must be dissolved at the end of five years from when it first met following the previous general election. There must be a general election within three months after every dissolution.)

B. CARICOM/OECS

10. Montserrat has been a member of the Caribbean Community (CARICOM) since it was established by the Treaty of Chaguaramas in 1973 to promote economic cooperation and integration among the member countries of the Community comprising more developed and less developed countries (MDCs and LDCs). Montserrat is also a member of the Organisation of Eastern Caribbean States (OECS) which was established in 1981 and is a subgrouping of LDCs.

The Eastern Caribbean Central Bank is an institution established within the subgrouping which regulates and monitors the Eastern Caribbean dollar in member territories. The services of all regional institutions set up by CARICOM and the OECS are available to Montserrat.

C. The law

The courts

11. The courts structure consists of the Magistrates Court, the High Court, the Court of Appeal and the Judicial Committee of the Privy Council. There are also Juvenile Courts, a Coroner's Court and a Labour Tribunal (see below). The High Court and the Court of Appeal are in fact the courts which together constitute the Eastern Caribbean Supreme Court. This Court and its judges serve not only Montserrat but also a number of independent countries in the Eastern Caribbean and a number of other British dependent territories in the region. (At present they visit Montserrat periodically for their sittings but the Eastern Caribbean Supreme Court is considering the appointment of a judge to be shared on a permanent basis by Montserrat and Anguilla.) There are elaborate provisions, which form part of the law of all the countries and territories concerned, regulating the appointment and tenure of office of the judges and ensuring that they are protected from political interference from any source. So far as concerns the magistrates in Montserrat and any registrar or other officers of the High Court there who are required to possess legal qualifications, the Constitution requires the Governor, in exercising his powers of appointment and removal, etc., to act only after consultation with the Chief Justice.

Police and prisons

12. As explained above, internal security, including the police, is a subject that the Constitution reserves to the Governor, and the police force is not subject to ministerial direction or control. The Governor is also responsible for the administration of the prison. There is a Prison Committee, consisting of not less than three Justices of the Peace, which is responsible for investigating charges or complaints against prisoners and which also has the duty to inquire into any irregularity or excessive punishment and report to the Governor where necessary.

Criminal proceedings

13. Criminal proceedings are usually initiated (and in the Magistrates Court are usually conducted) by the police who will, however, refer difficult cases to the Attorney-General's Chambers for advice or for the Attorney-General to take over. In some cases the Attorney-General may himself initiate proceedings. Section 21 of the Constitution empowers him to institute and undertake criminal proceedings against any person before any court; to take over and continue any such proceedings that have been instituted by any other person; and to discontinue any such proceedings that have been instituted by himself or any other person. In exercising these powers, he is not subject to anybody else's direction or control.

14. Most criminal proceedings take place before the Magistrates Court but the more serious ones can (and in some cases must) be tried on indictment in the High Court before a judge and jury. All prosecutions in the High Court are conducted by the Attorney-General or a Crown Counsel. In all cases the Magistrate or the jury must be satisfied by the prosecution beyond

reasonable doubt that the accused person is guilty of the charge against him. Section 57 of the Constitution (which substantially corresponds to articles 14 and 15 of the International Covenant on Civil and Political Rights) guarantees the right to a fair trial, with all the necessary procedural safeguards, and section 56 guarantees the rights of persons in custody (and specifically persons detained in connection with criminal proceedings). Section 66 of the Constitution provides the enforcement machinery for these and other human rights protected by the Constitution (see below).

15. The Magistrates Court Ordinance 1984 and the Juveniles Ordinance 1982 establish special procedures for dealing with juvenile offenders, including the setting up of juvenile courts. When a child or young person is convicted of a criminal offence, he may be sent to a training school for up to three years or until he reaches the age of 16 (whichever is the shorter period) or he may be placed under the supervision of a probation officer or released on a recognizance.

16. Appeals in criminal cases lie from the Magistrate Court and the High Court to the Court of Appeal and there may be a further appeal to the Judicial Committee of the Privy Council.

Civil proceedings

17. Both the Magistrates Court and the High Court have jurisdiction in civil cases also. The jurisdiction of the Magistrates Court covers such matters as debt, breach of contract, most torts (but not defamation, etc.) and most disputes concerning property; but the sum in issue must not exceed EC$ 2,000. The Magistrates Court also has a limited jurisdiction in family matters, for example, in cases relating to custody or maintenance orders. The High Court has unlimited jurisdiction in all civil cases. Appeals in civil cases lie from the Magistrates Court and the High Court to the Court of appeal and there may be a further appeal to the Judicial Committee of the Privy Council.

Coroner's court

18. The Magistrate is the Coroner for Montserrat. He has the duty to investigate all violent and or unnatural deaths or sudden deaths where the cause is unknown. He is empowered to order a post-mortem examination to be carried out in appropriate cases. Where, after such an examination, he is satisfied that the death in question was due to natural causes, he does not usually need to hold a formal inquest but he must do so if the death was violent or unnatural or the result of an accident or in certain other circumstances, for example, if it occurred in prison. In some, but not all, cases he must summon a jury to assist him.

Labour Tribunal

19. The Employment Ordinance provides for the establishment of a Labour Tribunal consisting of six members and a chairman, all appointed by the Governor. Three of the members are appointed to represent the interests of employers and three to represent the interests of employees. The Chairman is appointed after consultation with the Chief Justice. The Tribunal is empowered to make orders declaring the rights of parties to disputes in the employment field and to make enforceable monetary awards in such cases.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

20. The basic means of protecting and enforcing human rights in Montserrat - in addition, that is, to the pressure of public opinion through the democratic process - is by invoking the relevant domestic law and the ordinary courts system which, as explained above, is independent and impartial and is protected from political interference.

21. Under the Common Law system which operates in Montserrat, treaties which apply to Montserrat (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation - this could be by an ordinance enacted locally or by an order in council made by the United Kingdom Government - or to amend existing legislation or to adapt existing administrative practices, as the case may require. Where this results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation or in some cases, by criminal sanctions.

22. However, and over and above this, the Constitution of Montserrat does contain, in its Part IV (sects. 52-67), a fully elaborated set of provisions for the protection of the fundamental rights and freedoms of the individual. These provisions, which define in detail the rights concerned and the permissible limitations that may be imposed on them, derive directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. In times of emergency (as defined in the Constitution) the law may authorize measures to be taken which derogate from certain of the rights protected but only if those measures are reasonably justifiable for dealing with the situation then existing, a question which can ultimately be determined by the courts.

23. Section 66 of the Constitution provides that if any person alleges that any of the substantive provisions of Part IV has been, or is being, or is likely to be, contravened in relation to him, then, without prejudice to any other remedy that is lawfully available to him, he may apply to the High Court for redress. On such an application, the High Court may make such orders, issue such writs and give such directions as it may consider appropriate for enforcing the rights, under Part IV, of the person concerned. Moreover, if a question as to the contravention of any of the provisions of Part IV arises in any subordinate court, that court must refer it for determination by the High Court. An appeal lies as of right to the Court of Appeal and thence to the Judicial Committee of the Privy Council from any decision of the High Court under Part IV.

24. It is to be noted that, as section 66 of the Constitution makes clear, these safeguards for the protection of human rights that are provided by the Constitution are in addition to the remedies that may exist in the ordinary law, for example, an action for wrongful arrest or false imprisonment or, in appropriate cases, a prosecution.

IV. INFORMATION AND PUBLICITY

25. The texts of the United Nations human rights instruments to which the United Kingdom is a party in respect of Montserrat are usually publicized when they become available in the territory, for example, by being published in the Official Gazette and/or by copies being placed in the Library. The Constitution of Montserrat which, as explained above, makes provision, legally enforceable, for the protection of the fundamental human rights and freedoms of the individual is of course accessible to the public as are the other relevant laws of Montserrat referred to above.

26. The Government-owned radio station, Radio Montserrat, from time to time carries programmes produced by United Nations radio on the subject of human rights. In addition, another local radio station, Radio Antilles, has carried stories focusing on major human rights issues concerning the Caribbean region or other parts of the world.

27. There is no organization in Montserrat specifically devoted to discussing or monitoring human rights issues but the Montserrat Christian Council is extremely active and vigilant in this field.

Annex VIII

PITCAIRN

I. LAND AND PEOPLE

1. The Pitcairn group consists of four islands in the Western Pacific Ocean (Pitcairn itself and its dependencies, Henderson, Ducie and Oeno) of which only Pitcairn itself is inhabited. The islanders are descended from mutineers from HMS Bounty, which arrived in Pitcairn in 1790, and the Polynesians who accompanied them. At 31 December 1993 the total population of the island was 53 (28 females and 25 males). Of these, 46 were Pitcairners and 7 were expatriates. The ages of the population range from 4 months to 86 years. All the population live in Adamstown, the only settlement on Pitcairn.

2. Pitcairn is a British Dependent Territory. Its principal sources of income are stamp sales and revenue from interest and dividends. In 1992/93, income for the year was NZ$ 553,128 and expenditure NZ$ 813,995, leaving a deficit of NZ$ 260,867. There is no taxation.

3. Pitcairn's private economy is based on subsistence agriculture and fishing, and the sale of handicrafts, mainly to passing ships. The population of the Island is self-employed, but allowances and wages are paid to members of the community who participate in local government activities and who perform communal services.

4. Education is free and compulsory for all children between 5 and 15 years of age. Instruction is in the English language and is based on the New Zealand standard curriculum. Most Pitcairners are members of the Seventh Day Adventist Church.

II. GENERAL POLITICAL STRUCTURE

A. System of government

5. Pitcairn, whose constitutional arrangements were previously somewhat rudimentary and unsystematized, was brought within the jurisdiction of the United Kingdom's High Commissioner for the Western Pacific in 1898. The Pitcairn Order in Council 1952 established for the first time a separate office of Governor of Pitcairn and, as from 1952 and until 1970, that office was held concurrently by the Governor of Fiji. In 1970 the Order in Council of 1952 was revoked and replaced by the Pitcairn Order 1970 which, together with the Pitcairn Royal Instructions 1970, is in effect the present Constitution of Pitcairn. Copies of the Order and the Royal Instructions are provided in appendices 1 and 2 respectively. These are the instruments which now establish the office of Governor and regulate his powers and duties. The Governor is appointed by the Queen, acting on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs to whom he is accountable. In practice, the United Kingdom High Commissioner to New Zealand is appointed concurrently as Governor of Pitcairn and the responsibility for the administration of the Island is accordingly vested in him and is discharged by him and officers subordinate to him.

6. Under the 1970 Order, the Governor is the legislature for Pitcairn and is empowered to make laws on any subject. However, the Royal Instructions require him to obtain the prior approval of the Secretary of State for the enactment of certain classes of laws, including laws which appear to him to be inconsistent with the United Kingdom's treaty obligations and laws which discriminate between different communities or religions. Laws enacted by the Governor are styled Ordinances. Formally, all Ordinances are subject to disallowance by the Queen, on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate directly for Pitcairn by Act of Parliament or Order in Council. It is under his legislative power that the Governor establishes courts for Pitcairn and regulates their jurisdiction and procedure (see para. 11 below). The 1970 Order also vests in the Governor the power to appoint persons to offices in the public service and to remove or discipline them.

7. Pitcairn islanders manage their internal affairs through the Island Council. This is established by the Local Government Ordinance which confers on it the duty to provide for the enforcement of the laws of Pitcairn and empowers it to make regulations for the good administration of Pitcairn, the maintenance of peace, order and public safety and the social and economic betterment of the islanders. The Council is required to meet at least once in every month. It consists of 10 members: the Island Magistrate, who is elected every three years; the Chairman of the Internal Committee, who is elected annually; four other elected members, who are also elected annually; the Island Secretary, who is a public officer and serves on the Council ex officio; one nominated member, who is appointed annually by the Governor; and two advisory (non-voting) members, of whom one is appointed annually by the Governor and the other is appointed annually by the other members of the Council.

8. The Island Magistrate is the President of the Island Council. He is also the Chief Executive Officer of Pitcairn and he also presides over the Island Court (see para. 11 below). The formal functions of the Internal Committee are to carry out the orders of the Island Council and to perform such duties as the Council may direct: in practice, its principal function is to organize and implement the work programme. It comprises the Chairman and such other persons (not being members of the Island Council or public officers) as the Council, with the Governor's approval, may appoint.

9. To qualify for voting in elections to the various elective offices (Island Magistrate, Chairman of the Internal Committee and elected Councillors) a person must either be a native-born inhabitant of Pitcairn or have had at least three years' residence on the Island and must be at least 18 years of age. A candidate for election as Island Magistrate or Chairman of the Internal Committee must either be a native-born inhabitant of Pitcairn or have had at least 21 years' residence on the Island; candidates for the other elective offices must either be native-born inhabitants or have had at least five years' residence.

10. The Island Secretary and other non-elected officials (for example, the Postmaster, the Radio Officer and Police Officer) are appointed by the Governor, invariably after consultation with the Council. A Commissioner, based in Auckland, liaises between the Governor and the Island Council.

B. The law

11. The courts for Pitcairn are the Supreme Court, the Subordinate Court and the Island Court. In certain cases an appeal could lie from these courts to the Judicial Committee of the Privy Council. The Supreme Court consists of such judge or judges as the Governor, acting in accordance with instructions from the Secretary of State, may from time to time appoint. It has unlimited jurisdiction in all civil and criminal matters. Trials before the Supreme Court, whether in criminal or in civil cases, would normally be held by a judge sitting alone, but the Court would have power in suitable cases to appoint between two and four assessors. The Subordinate Court consists of a magistrate, who is any fit and proper person whom the Governor appoints for that purpose. It would ordinarily have the same jurisdiction and powers in criminal cases as a magistrate's court in England and the same jurisdiction and powers in civil cases as a county court in England, but the Governor could enlarge its jurisdiction in particular cases. There would be a right of appeal in all cases to the Supreme Court. The Island Court consists of the Island Magistrate sitting with two assessors, but the Island Magistrate is empowered (or in some circumstances is required) to sit alone in dealing with certain cases. It has a wide jurisdiction in civil disputes where the amount in issue does not exceed a specified sum and also in guardianship, custody and maintenance cases and in certain cases involving the affairs of persons of unsound mind or of sick and aged persons. But some civil disputes (for example, suits for malicious prosecution or for defamation) are specifically excluded from its jurisdiction. It also has the power to inquire into deaths that may have been caused or accelerated by any unnatural cause and into cases where property has been destroyed or damaged by fire. Its criminal jurisdiction covers all offences except those specifically excluded by any law, but its powers of punishment are limited and it may not deal with offences committed more than six months previously. It would also act as the court of committal to either the Subordinate Court or the Supreme Court in criminal cases that require to be dealt with by one or the other of those courts. The Governor has the power, either of his own motion or on the application of any party to a case determined by the Island Court, to have the record of the proceedings in that case reviewed by the Supreme Court which could then make such orders and give such directions to the Island Court as it considered necessary or expedient in the interests of justice.

12. Although the law of Pitcairn makes this comprehensive provision for the administration of justice, in practice most aspects of it scarcely ever need to be invoked. It is in fact rare for even the Island Court to be required to sit.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

13. Pitcairn's Constitution, as embodied in the Pitcairn Order 1970 and the Pitcairn Royal Instructions 1970 (appendices 1 and 2), does not contain any provisions expressly guaranteeing human rights nor has any formal machinery been established specifically for that purpose. Under the Common Law system which operates in Pitcairn, treaties which apply to Pitcairn (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked as a source of individual rights, though the courts are required, when possible, to construe domestic legislation in such a way as to avoid incompatibility with the

United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation or to amend existing legislation or to adapt existing administrative practices, as the case may require. (New legislation for this purpose could take the form of a locally-enacted ordinance or of an order in council made by the United Kingdom Government). Examples of Orders in Council made for this purpose are the Geneva Conventions Act (Colonial Territories Order in Council 1959, which implemented the four Geneva Conventions in Pitcairn and a number of other British Dependent Territories, and the Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988, which similarly implemented the Convention against Torture. Were such new or amending legislation results in the creation or definition of specific legal rights and these are denied or interfered with (or there is a threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation or, in appropriate cases, by criminal sanctions. But, for the most part, the legal protection of the human rights of Pitcairn islanders does not depend on specific legislation such as the two Orders in Council just referred to: it is assured through the enforcement by the local courts of the basic principles of the law in force in the Island, which are the same as the basic principles of the law of England.

14. Without prejudice to the ability of the courts to grant relief and redress in any case where legal rights are infringed or threatened, the Governor has the ultimate responsibility for overseeing the implementation of human rights in Pitcairn. Any complaint of unlawful or oppressive action by any government official or authority could be raised with him, either directly or through one of his subordinate officers, and would be investigated thoroughly. If it proved to be well founded, he has the power, which he would not hesitate to use, to take the appropriate remedial measures.

IV. INFORMATION AND PUBLICITY

15. The laws in force in Pitcairn, including any specifically relating to human rights, are published by the Government of the United Kingdom and are accessible to all on the Island through the Island Secretary's office.

16. Pitcairn's reports to international bodies are prepared by the Government of the United Kingdom, drawing on information provided by the Governor and his officials.

Annex IX

ST. HELENA

I. LAND AND PEOPLE

1. St. Helena, with its Dependencies (the islands of Ascension and Tristan da Cunha, which latter also includes Gough Island, Nightingale Island and Inaccessible Island), is situated in the South Atlantic Ocean, some 1,200 miles from the coast of Africa and some 1,800 miles from the coast of South America. Its capital is Jamestown. The island of St. Helena, though believed to have been discovered by the Portuguese in 1502 and though at one time claimed by the Dutch, remained uninhabited until it was occupied, in 1659, by British settlers acting under the authority of a charter granted to the East Indies Company. It was formally made a dependent territory of the British Crown in 1833. Ascension and Tristan da Cunha were also uninhabited when they were first occupied by British settlers in the early nineteenth century. These settlements have continued uninterrupted since then. Ascension was formally made a dependency of St. Helena in 1922 and Tristan da Cunha was made such a dependency in 1938.

2. Background statistical information, using the most up-to-date material available, is as follows:

Gross domestic product per capita	£1 747 (1992/93)
Gross national product	£10 403 m (1992/93)
Rate of inflation	3.1 per cent (August 1994)
External debt	None. But St. Helena is not economically viable and it is dependent on grants-in-aid from the United Kingdom Government
Rate of unemployment	10.3 per cent (September 1993)
Literacy rate	Males - 96.4 per cent Females - 97.5 per cent 1987 Census
Population	5 139 (1992/93 estimate - St. Helena only)
Percentage of population speaking English as mother tongue	100 per cent
Life expectancy	Males - 68.4 years Females - 75.4 years (1984-1993 average)

Infant mortality rate	21.4 per 1 000 live births, 5 year moving average 1989-1993 (too few to provide separate steady and reliable rates for each gender)
Maternal mortality rate	No deaths in 5 years 1988-1993
Birth rate	14.1 per 1 000 population 5 year moving average 1989-1993
Death rate (females)	7.6 per 1 000 population 5 year moving average 1989-1993
Death rate (males)	9.2 per 1 000 population 5 year moving average 1989-1993
Percentage of population under 15 years of age	Males under 15 - 13.7 per cent Females under 15 - 13.9 per cent 1987 Census
Percentage of population over 65 years of age	Males over 65 - 4.0 per cent Females over 65 - 5.0 per cent 1987 Census
Percentage of population in rural and urban areas	Rural - 56.7 per cent Urban (Jamestown and Half Tree Hollow) - 43.3 per cent 1987 Census
Ethnic characteristics	Of many origins with no ethnic divisions
Religions	Church of England Males - 87.4 per cent Females - 85.6 per cent Jehovah's Witness Males - 4.2 per cent Females - 5.5 per cent Baptist Males - 2.7 per cent Females - 2.8 per cent

There are also the Salvation Army, Seventh Day Adventists, Roman Catholics and Methodists, all at less than 2 per cent - 1987 Census

II. GENERAL POLITICAL STRUCTURE

A. System of government

3. St. Helena is a British Dependent Territory. Its Constitution is now contained in Schedule 2 to the St. Helena Constitution Order 1988, a copy of which is provided in appendix 1. It provides for a simplified form of "Westminster style" Parliamentary government, with a Governor (representing the Queen), an Executive Council (roughly corresponding to a Cabinet) and a largely elected legislative Council (from whose elected members at least half of the members of the Executive Council are drawn).

4. The Governor is appointed by the Queen, on the advice of the United Kingdom Secretary of State for Foreign and Commonwealth Affairs to whom he is responsible for the exercise of those of his functions which he is not required by law to exercise on the advice of some other person or authority. He exercises executive authority on behalf of the Queen. He is assisted by an Executive Council over which he generally presides and which consists of three ex officio members (the Chief Secretary, the Financial Secretary and the Attorney-General) and not less than three nor more than five other members who are elected members of the Legislative Council. The Governor is generally required to consult the Executive Council in the exercise of his functions and to act in accordance with its advice, but the Constitution specifies a number of circumstances in which, or matters upon which, he need not consult the Council or need not act in accordance with its advice. In particular, the Governor has reserved to him, as his special responsibilities, the following matters in connection with which he may act without, or contrary to, the advice of the Executive Council: the public service (i.e. appointments discipline and terms of service of public officers); defence; external affairs; internal security, including the police; the administration of justice; finance; and shipping.

5. The Constitution also provides for the establishment of Council Committees (i.e. Committees consisting both of members of the Legislative Council and of outsiders - but the members of the Legislative Council must be in the majority) upon which executive and administrative functions may be conferred: for example, a Council Committee may be charged with responsibility for particular government departments or it may be invested with a responsibility which, under a local law, would otherwise be exercisable by the Governor himself or some other authority.

6. The Legislative Council consists of a Speaker (who may be, but need not be, himself an elected member of the Council and who is elected by the elected members), three ex officio members (the Chief Secretary, the Financial Secretary and the Attorney-General - but the Attorney-General has no vote in the Council) and 12 elected members. Elected members must be British citizens or British Dependent Territory citizens of at least 21 years of age who are registered as voters in St. Helena and are not subject to any of the specified disqualifications (for example, on grounds of mental illness, bankruptcy, imprisonment, etc.). For the purpose of

Legislative Council elections St. Helena is divided into defined electoral areas (constituencies), and elections, by secret ballot, are held on the basis of universal adult suffrage. The voting age is 18 years or more. Although two political parties are nominally in existence, they have been inactive since 1976 and elections since then have been non-partisan.

7. There must be at least one session of the Legislative Council in every year, with an interval of no more than 12 months between the end of each session and the beginning of the next. The Governor may dissolve the Legislative Council at any time but must do so not later than four years after it first met following the previous general election. A general election must take place within three months of each dissolution and the Legislative Council must be summoned into session within one month after each general election.

8. Laws on any subject may be made for St. Helena itself (i.e. the island of St. Helena) by "the Governor with the advice and consent of the Legislative Council" and for Ascension and Tristan da Cunha by "the Governor in his discretion". (In practice, laws for Ascension and Tristan da Cunha often take the form of a straightforward application of laws made for St. Helena, with the necessary adaptations or modifications.) All such laws are styled "Ordinances". St. Helena laws are made by bills introduced in the Legislative Council, which are there passed by a majority of the members present and voting and which are then assented to by the Governor. The Governor has a reserve power in certain circumstances (for example, where he considers it required by the interests of public order, public faith or good government) to treat a bill which has been introduced in the Council, but which the Council has failed to pass, as having nevertheless been passed, and to assent to it. All Ordinances are formally subject to disallowance by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate for St. Helena by Act of Parliament or by Order in Council.

B. The law

9. The courts structure consists of a Magistrates' Court, a Juvenile Court and a Coroner's Court, for all of which provision is made by local legislation; a Supreme Court and a Court of Appeal, which are established by the Constitution itself; and the Judicial Committee of the Privy Council. The law administered by all courts is basically the law of England in so far as it is applicable to local circumstances (and, where appropriate, with the necessary modifications and adaptations to make it fit local circumstances) but in many fields it is of course specifically displaced or modified by local legislation.

10. The Magistrates' Court has a limited jurisdiction, defined by local enactment, in both criminal and civil cases. In criminal cases its jurisdiction extends to offences under the Theft Acts (with some minor exceptions) and to other statutory offences for which the prescribed maximum penalty does not exceed seven years' imprisonment, but the magistrates may not impose a sentence of imprisonment exceeding 18 months for a single offence or two years in a case where more than one offence has been committed; nor may they impose a fine exceeding £2,000. In civil cases the jurisdiction of the Magistrates' Court extends to disputes where the value of the subject-matter does not exceed £500. The Supreme Court, as well as being the court to which appeals lie from the Magistrates' Court, has a power of revision in relation to all cases dealt with by the Magistrates' Court; and the Chief Justice, during his annual visit, reviews all

such cases dealt with since his previous visit. Magistrates (who are in fact formally styled Justices of the Peace, as in England) are appointed by the Governor in accordance with his special constitutional responsibility for the administration of justice (see para. 4 above). There are separate Magistrates' Courts in Ascension and Tristan da Cunha. In Ascension the Administrator is the Magistrate ex officio. He may sit alone but he usually sits with Justices of the Peace, and a full bench of Justices of the Peace may sit without him. In Tristan da Cunha the Administrator is the Magistrate ex officio and sits alone.

11. The Supreme Court has a jurisdiction in civil and criminal matters broadly comparable with the jurisdiction of the High Court in England but it also exercises jurisdiction in criminal cases which in England would fall to the Crown Court and in civil cases which in England would fall to a county court. As noted above, it is also the appellate court in appeals from a Magistrates' Court. It is normally presided over by a single judge, styled the Chief Justice, who is appointed by the Governor on the instructions of the Queen given through a Secretary of State. The Chief Justice is non-resident but visits St. Helena and Ascension approximately annually and Tristan da Cunha as occasion arises. He is also empowered by the Constitution to sit in the United Kingdom for certain purposes and in certain circumstances. For example, if all parties consent, he may sit in the United Kingdom to hear appeals and to take evidence in civil proceedings.

12. The Court of Appeal, to which appeals lie from the Supreme Court, consists of a President and two or more Justices of Appeal. These judges are also appointed by the Governor on the instructions from the Queen given through a Secretary of State and they, too, are of course non-resident. The Court of Appeal is empowered to sit either in St. Helena or the Dependencies or "elsewhere", but in practice it would ordinarily sit in the United Kingdom. Appeals from the Court of Appeal lie to the Judicial Committee of the Privy Council.

13. Throughout the courts structure appeals lie in a manner broadly comparable with that obtaining in the United Kingdom. The most notable special feature is the revisory jurisdiction of the Supreme Court in relation to cases dealt with by the Magistrates' Court (see para. 10 above). This is seen as a very valuable safeguard in circumstances where most defendants are not represented by qualified lawyers.

14. The Constitution expressly charges the Attorney-General with responsibility for criminal prosecutions and protects his independence in discharging that responsibility. He is given complete discretion to institute and undertake criminal proceedings against any person before any court for any offence; to take over and continue any such proceedings that have been instituted by anybody else; and to discontinue any such proceedings that have been instituted either by him or by anybody else. The power to take over and continue proceedings and the power to discontinue proceedings are vested in him to the exclusion of any other person or authority and the Constitution provides that, in the exercise of all his powers in relation to prosecutions, he is not subject to the direction or control of any other person or authority.

15. St. Helena has a very small but well-trained police force which is administered on much the same lines as a police force in England, with the Governor, by virtue of his special constitutional responsibility for internal security, including the police, (see para. 4 above), exercising a similar oversight in relation to it as does the Home Secretary in the United Kingdom

in relation to the Metropolitan Police Force. There is a small detachment posted to Ascension and a separate system for Tristan da Cunha. In addition to its ordinary police functions, the St. Helena police force performs a range of diverse tasks such as the provision of a fire service, a sea rescue service, the immigration service and a vehicle testing service, and it also has several licensing functions. It is also responsible for the administration of St. Helena's single prison, which is situated in Jamestown and which never has more than a tiny population at any one time.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

16. There are no authorities in St. Helena specifically charged with responsibility for human rights, and the basic method of protecting and enforcing such rights is by invoking the relevant domestic law (which, as explained above, is essentially the same as the law of England) and the ordinary courts system which is independent and impartial. On the administrative plane, any person in St. Helena may petition the Governor (under Colonial Regulations) for redress of any grievance and, if dissatisfied with the Governor's response, may further petition the Secretary of State. In appropriate cases the Governor would have the power to appoint a commission of inquiry under the Commissions of Inquiry Ordinance (Cap. 16).

17. The Attorney-General is the only qualified lawyer in St. Helena and there is therefore no scope for a full legal aid scheme. But advice and representation is provided by formally recognized lay advocates appointed under the Lay Advocates and Legal Assistance Ordinance 1986, and advice can also be sought from the Legal and Lands Department which provides legal services to the public at no charge. In appropriate cases legal advice may be sought from United Kingdom legal practitioners at the expense of the Legal Assistance Fund, a trust fund set up and wholly funded by the St. Helena Government. In a recent serious criminal case, funds were made available by the United Kingdom Government to pay for full representation by English lawyers, including representation in proceedings before the Court of Appeal.

18. St. Helena also has no formal scheme for the compensation of victims. But in certain cases the courts may order convicted offenders to pay compensation to the victims of their crimes and where no such legal remedy is available, the Governor, on the advice of the Executive Council, may direct an ex gratia payment of compensation to be made out of public funds. The Annual Estimates (i.e. the provision made each year for government expenditure in the following year) includes a "General compensation" head to cover such payments.

19. Under the Common Law system which operates in St. Helena, treaties which apply to St. Helena (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation or to amend existing legislation or to adapt administrative practices, as the case may require. Any legislation that is required for this purpose could take the form of a locally-enacted ordinance or it could take the form of an order in council made by the United Kingdom Government. Where this process results in the creation or definition of

specific legal rights and these are denied or interfered with (or such action is threatened), a remedy will be available in the courts through the ordinary procedures of civil litigation or, in some cases, by criminal sanctions.

IV. INFORMATION AND PUBLICITY

20. The texts of the various human rights instruments that are applied to St. Helena are drawn to the attention of the members of the Legislative Council. They are also disseminated throughout the Government Service: since the Government is the largest single employer in St. Helena, this ensures a wide circulation. The laws of St. Helena are, of course, accessible to all. As regards the reports submitted to the relevant treaty monitoring bodies, the drafts of the various parts of these reports are compiled by the appropriate government departments and are then scrutinized by the relevant council committees (see para. 5 above) which contain elected members of the Legislative Council. These councillors may put forward the views and concerns of their constituents or discuss the contents of the draft reports at their regular constituency meetings. The drafts thus prepared by the St. Helena Government are finalized by the United Kingdom Government. After the reports have been formally submitted to the treaty monitoring bodies, copies are sent to all government departments in St. Helena and they are made available to all members of the Legislative Council and are placed in the Public Library.

Annex X

TURKS AND CAICOS ISLANDS

I. LAND AND PEOPLE

1. Background statistical information, using the most up-to-date figures available, on the Turks and Caicos Islands, is as follows:

Population	12 350 (1990)
Per capita income	US$ 6 413 (1992)
Gross domestic product	US$ 79 million (1992)
Rate of inflation	2.9 per cent (1993)
External debt	US$ 8 million (1993)
Rate of unemployment	8 per cent (1993)
Literacy rate	90 per cent (1993)
Percentages of population speaking different mother tongues	Not available
Life expectancy	Male 74 (1993) Female 74 (1993)
Infant mortality rate	Male 6 (1993) Female 3.64 (1993)
Maternal mortality rate	Not available
Fertility rate	3.00 (1993)
Population under 15 and over 65 years of age	Males under 15 - 1 858 (1993) Females under 15 - 1 829 (1993) Males over 65 - 252 (1993) Females over 65 - 322 (1993)

Percentage of population in rural areas and in urban areas	Not available
Percentage of households headed by women	Not available

II. GENERAL POLITICAL STRUCTURE

A. System of government

2. The Turks and Caicos Islands is a British Dependent Territory.

3. The present Constitution of the Islands is contained in Schedule 2 to the Turks and Caicos Islands Constitution Order 1988, as amended by the Turks and Caicos Islands Constitution (Amendment) Order 1993. Copies of these two instruments are provided in appendices 1 and 2. Part VIII of the Constitution (which is discussed in more detail in section III below) contains provisions which guarantee the fundamental rights and freedoms of the individual.

4. The main features of the Constitution, apart from Part VIII, are described in paragraphs 5 to 16 below. In brief, the Turks and Caicos Islands are internally self-governing with a "Westminster style" form of Parliamentary and Ministerial government. There is a Governor (representing the Queen), an Executive Council (corresponding to a Cabinet) and a largely elected legislature, the Legislative Council, from which the Executive Council is drawn and to which it is accountable (and by which it may, in effect, be dismissed).

The Executive

5. The Governor, in whom executive authority is formally vested, is appointed by the Queen on the advice of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom to whom he is responsible for the exercise of those of his functions which the law does not require him to exercise on the advice of some other authority. In general, however, he is required to consult the Executive Council in the exercise of his functions and to act in accordance with its advice. But this does not apply to cases where the matters for which he has direct responsibility (see para. 7 below) are involved and he may also, with the Secretary of State's prior approval, disregard the Executive Council's advice where he judges that the interests of public order, public faith or good government so require.

6. The Executive Council, at whose meetings the Governor usually presides, consists of the Chief Minister and five other Ministries and also the Chief Secretary and the Attorney-General as ex officio members. The person whom the governor appoints as Chief Minister is the leader of the majority party in the Legislative Council (or, if no party has a majority, the elected member whom the governor judges most likely to command the support of a majority of the elected members). The other Ministers are appointed on the advice of the Chief Minister from among the other elected members of the Legislative Council.

7. The Constitution reserves to the Governor the direct responsibility for defence, external affairs, international and offshore finance, internal security (including the Police Force) and the public service, though he may delegate to a Minister the responsibility for certain matters relating to external affairs or internal security. Subject to this, the Governor, acting on the advice of the Chief Minister, assigns to the individual Ministers the responsibility for particular aspects of the business of the Government, including the administration of government departments. But Ministers are required to observe the principle of collective responsibility.

8. The Constitution also recognizes the office of Leader of the Opposition. The Governor appoints to that office the leader of the largest opposition party in the Legislative Council (or, if there is no single party in that position, the member of the Legislative Council whom the Governor judges to be best able to command the support of the opposition members of the Council).

9. The Constitution establishes a Public Service Commission consisting of a Chairman, appointed by the Governor "acting in his discretion" (i.e. he is not obliged to consult anybody before making the appointment), and two other members whom the Governor also appoints but in one case after consultation with the Chief Minister and in the other case after consultation with the Leader of the Opposition. In general, the Governor's powers in respect of the public service (for example, his power to appoint, dismiss, etc.) must be exercised on the recommendation of the Public Service Commission, but in certain circumstances he may override their advice, and their jurisdiction does not cover certain offices, such as those of judges, police officers, the Chief Secretary, the Attorney-General, etc. The Public Service Commission also has certain other, mainly advisory, functions in relation to the public service, for example, in respect of training, ethics, and pay and conditions of service.

The Legislative Council

10. The Legislative Council consists of 13 elected members, 3 appointed members and 2 ex officio members (the Chief Secretary and the Attorney-General). There is also a Speaker who is elected by the elected and appointed members either from among their own number or from among persons who would be qualified to become appointed members (see below). A candidate for election to the Legislative Council must be at least 21 years old, must possess certain residence qualifications and must also have a defined connection with the Islands (i.e. must have been born in the Islands or have had one parent born in the Islands or have the status of "Belonger" under the law regulating immigration). He must also not be otherwise expressly disqualified, for example, because he is a public officer or because he is of unsound mind or because he has been convicted of a serious criminal offence. The appointed members, who must also not be expressly disqualified (on any of the same grounds as apply to elected members), must be at least 21 years old and must be qualified to be registered as electors (see below). The Constitution requires all three appointed members to be selected so as to represent shades of opinion that would otherwise not be represented in the Legislative Council: one is appointed by the Governor "acting in his discretion", one on the advice of the Chief Minister and the third on the advice of the Leader of the Opposition.

11. A person seeking to be registered as an elector in elections to the Legislative Council must be at least 18 years old and must have the same residence qualifications and the same defined connection with the Islands as a candidate for election. But he will be expressly disqualified if he is of unsound mind or is serving a long term of imprisonment or has been convicted of certain offences connected with elections.

12. Elections to the Legislative Council have hitherto been held on the basis of five multi-member electoral districts but there will in future (under the 1993 amendment to the Constitution) be 13 single-member electoral districts. These will be delimited (with a view to their containing approximately equal numbers of electors) by a three-member Electoral District Boundary Commission. The Boundary Commission submitted its first recommendations in February 1994 and these have now been accepted by the Legislative Council. The Chairman of the Boundary Commission is appointed by the Governor, acting in his discretion, from among persons who hold or have held high judicial office or high legal office and the other two members are appointed by the Governor on the advice of the Chief Minister and the Leader of the Opposition respectively.

13. There must be at least one session of the Legislative Council in every year and, when it is in session, the Council must meet at least every four months. (In practice, the Council usually meets more frequently than this suggests.) If the Council has not been dissolved earlier, it must be dissolved at the end of four years from when it first met after the previous general election. A general election must be held within three months of each dissolution of the Council and the new Council must be called into session within one month of each general election.

14. The Legislative Council may make laws on any subject. It exercises this power by passing bills which are then presented to the Governor for his assent. He may then, in accordance with the usual rules governing how he exercises his functions, either assent to them or refuse his assent or reserve them for decision by the Secretary of State. There are certain categories of bills which he is required to reserve. He may also return a bill to the Legislative Council with a recommendation for its amendment and the Council must then consider that recommendation. The Governor also has a reserved power to compel the passage of a bill (or a bill in a specified form) through the Legislative Council if he considers this to be required in the interests of public order, public faith or good government or in the interests of one of the matters for which he retains direct responsibility. Formally, all laws assented to by the Governor may be disallowed by the Queen on the advice of the Secretary of State. The United Kingdom Government retains the power to legislate directly for the Turks and Caicos Islands by Act of Parliament or by Order in Council.

15. In addition to its legislative functions, the Legislative Council exercises scrutiny and control in various ways over the functioning of the executive Government. It has a general power to establish committees for this and other purposes and the Constitution expressly requires the establishment of at least two standing committees to monitor the conduct of the business of the government for which responsibility has been assigned to Ministers. These standing committees have the power to summon Ministers and officials to appear before them to answer questions and provide information. The composition of each standing committee (in terms of the representation of political parties) must fairly reflect the composition of the Legislative Council and at least one such committee must be presided over by an opposition member.

16. The Legislative Council also has the power, in effect, to dismiss the Government. If a majority of the elected members of the Council vote in favour of a motion of no confidence in the Government, the Governor is required either to revoke the Chief Minister's appointment (in which case all the other Ministers also vacate their offices) or, if the Chief Minister so requests and the Governor agrees, to dissolve the Council and order the holding of a general election.

B. The law

17. The courts structure consists of a Magistrates Court, the Supreme Court, the Court of Appeal and the Judicial Committee of the Privy Council. There is also a Juveniles Court and the Coroner's Court.

18. The Magistrates Court, which was established by the Magistrates Ordinance 1900, is held by a magistrate who is appointed by the Governor, acting in his discretion. The magistrate must be a person who is qualified as a legal practitioner in a country within the Commonwealth or in the Republic of Ireland. His court has jurisdiction in both civil and criminal cases. In civil matters it is ordinarily restricted to cases in which the amount in dispute does not exceed US$ 2,000 but it also has a limited but important jurisdiction in family matters, for example, as regards maintenance for parties to a marriage or a child of the family, the custody or protection of children, and affiliation orders. In criminal matters it has jurisdiction in respect of all summary offences (broadly speaking the less serious offences) and also in respect of some indictable offences. But its powers of punishment, by way of fine or imprisonment, are of course limited. In the case of indictable offences which are outside its jurisdiction or which it considers are not appropriate for it to deal with, the function of the Magistrates Court is to conduct a preliminary inquiry and, if it concludes that there is a sufficient case for the accused person to answer, to commit him for trial on indictment by the Supreme Court. An appeal lies to the Supreme Court from decisions of the Magistrates Court in both civil and criminal cases.

19. The Supreme Court, which is established by the Constitution, consists of a Chief Justice and not more than two other judges, all of whom are appointed by the Governor, acting in his discretion. (At present there is only one judge of the Supreme Court, the Chief Justice.) To be qualified for appointment as a judge of the Supreme Court a person must be a qualified legal practitioner, of at least five years standing, in some country within the Commonwealth. Once appointed, a judge of the Supreme Court cannot be removed during his term of office except for proven incapacity or misconduct as established by a judicial tribunal. The Supreme Court has unlimited jurisdiction in civil and criminal matters. For the most part, it deals with civil claims falling outside the competence of the Magistrates Court (including divorce and other family matters which the Magistrates Court is not empowered to deal with) and, on the criminal side, with indictable offences where the accused person has been committed by the Magistrates Court for trial. As noted above, it also has jurisdiction in respect of appeals from the Magistrates Court in both civil and criminal causes.

20. The Court of Appeal, which is also established by the Constitution, consists of a President and at least two other Justices of Appeal, all of whom are appointed by the Governor, acting in his discretion, from among persons who hold or have held high judicial office in some country within the Commonwealth. As in the case of judges of the Supreme Court, Justices of Appeal are protected from improper pressure or interference by being made irremovable from

office except for proven incapacity or misconduct as established by a judicial tribunal. The Court of Appeal, which in practice usually sits in the Bahamas, has jurisdiction in respect of appeals from the Supreme Court and in certain cases a further appeal may lie to the Judicial Committee of the Privy Council.

21. The Juveniles Court, which was established by the Juveniles Court Ordinance 1968, is presided over by the Magistrate or by a Justice of the Peace authorized by the Governor. Its jurisdiction covers cases involving persons under 16 years of age. Its procedures are less formal than those of the ordinary Magistrates Court and the general public are not admitted to its sittings.

22. The Magistrate is ex officio the Coroner for the Turks and Caicos Islands and presides over the Coroner's Court in which he inquires into violent or unnatural deaths or deaths which have occurred in suspicious circumstances or otherwise in circumstances which make an inquest desirable. In most cases he may sit either with or without a jury, as he considers fit, but in some cases he is obliged to summon a jury to sit with him.

23. The legal system in the Turks and Caicos Islands is based on the common law, as modified over the years by specific legislation. Most of this legislation now consists of laws that were enacted by successive legislatures in the Islands themselves, but the statute-book still contains some laws which the Turks and Caicos Islands have inherited through their former connection with Jamaica and the Bahamas or their former status as part of the Federation of the West Indies. The procedures of the courts are essentially similar to those of the corresponding courts in the United Kingdom. Criminal proceedings are adversarial, with the onus always being on the prosecution to prove its case beyond reasonable doubt. Section 72 of the Constitution (which substantially corresponds to arts. 14 and 15 of the International Covenant on Civil and Political Rights) guarantees the right to a fair trial, with all the necessary procedural safeguards, and section 71 guarantees the rights of persons in custody (and specifically persons detained in connection with criminal proceedings). Section 81 of the Constitution provides the enforcement machinery for these and other human rights protected by the Constitution (see para. 28 below).

24. In theory, and to a certain extent in practice, criminal prosecutions may be initiated by any member of the public. But most prosecutions are in fact initiated and conducted by the police or by some other public authority, for example, the Collector of Customs. However, in any case of more than ordinary difficulty, the papers will be referred to the Attorney-General's Chambers for advice or for the Attorney-General to take over (or to discontinue). Preliminary inquiries (i.e. in cases of indictable offences) in the Magistrates Court and other difficult cases there are handled by the Attorney-General's Chambers and all cases in the Supreme Court are conducted by the Attorney-General or Crown Counsel. Under section 17 of the Constitution the Attorney-General has the power to institute and undertake criminal proceedings against any person before any court in respect of any offence; to take over and continue any such proceedings that have been instituted by any other person or authority; and to discontinue at any stage before judgement any such proceedings instituted or undertaken by himself or any other person or authority. He alone has these powers to take over and continue proceedings and to discontinue proceedings, and in the exercise of all his powers in relation to prosecutions he is not subject to the direction or control of any other person or authority.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

25. The basic means of protecting and enforcing human rights in the Turks and Caicos Islands - in addition, that is, to the pressure of public opinion through the democratic process - is by invoking the relevant domestic law and the ordinary courts system which, as shown above, is independent and impartial and is protected from political interference.

26. Under the Common Law system which operates in the Islands, treaties which apply to the Islands (including human rights treaties) do not themselves have the force of internal law and cannot be directly invoked before the courts as a source of individual rights, though the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. The usual method of giving effect to treaty obligations (when these require some change in existing law or practice) is to enact specific new legislation or to amend existing legislation or to adapt existing practice, as the case may require. New legislation may take the form of an ordinance enacted by the Legislative Council or it may take the form of an order in council made by the United Kingdom Government. Where new or amending legislation creates or defines specific legal rights and these are denied or interfered with (or such action is threatened), a remedy will be available in the courts through the ordinary procedures of civil litigation or, in some cases, by criminal sanctions.

27. However, over and above this, the Constitution of the Turks and Caicos Islands does contain, in its Part VIII (sects. 67-82), a fully elaborated set of provisions for the protection of the fundamental rights and freedoms of the individual. These provisions, which define in detail the rights concerned and the permissible limitations that may be imposed on them, derive directly from the European Convention on Human Rights and ultimately from the Universal Declaration of Human Rights. During a period of public emergency (as defined in the Constitution) a law may authorize measures to be taken which derogate from certain of the rights protected but only if those measures are reasonably justifiable for dealing with the situation then existing, a question which can ultimately be determined by the courts.

28. Section 81 of the Constitution provides that, if any person alleges that any of the substantive provisions of Part VIII has been, or is being, or is likely to be, contravened in relation to him, then, without prejudice to any other remedy that is lawfully available to him, he may apply to the Supreme Court for redress. Moreover, if a question as to the contravention of any of the provisions of Part VIII arises in any subordinate court, that court must refer the question to the Supreme Court for determination. On hearing such an application or such a reference, the Supreme Court may make such orders, issue such writs and give such directions as it considers appropriate for enforcing the rights, under Part VIII, of the person concerned. An appeal lies as of right from the Supreme Court to the Court of Appeal and thence to the Judicial Committee of the Privy Council in any case arising under section 81.

29. The Constitution also establishes the office of Complaints Commissioner (i.e. Ombudsman). The Complaints Commissioner, who may not be (or have recently been) a member of the Legislative Council or the holder of any office in a political party, is appointed by

the Governor after consultation with both the Chief Minister and the Leader of the Opposition. His functions and powers are spelled out in detail in the Complaints Commissioner (Ombudsman) Ordinance 1987. Under this Ordinance the Complaints Commissioner is authorized to investigate - and he is given wide powers for this purpose - any complaint by a member of the public that he suffered injustice in consequence of maladministration by a government department or a statutory authority. He is required to send a copy of his report on any investigation which he carries out to the complainant himself and to the principal officer of the department or authority concerned and, if he concludes that the complainant has indeed suffered injustice which has not been, or will not be, remedied, he may submit a special report on the case to the Executive Council. He is also required, each year, to lay before the Legislative Council a general report on the performance of his functions and he has a general discretion to submit special reports to the Legislative Council from time to time.

Annex XI

ISLE OF MAN

I. LAND AND PEOPLE

1 Background statistical information, using the most up-to-date figures available, on the Isle of Man, is as follows:

Population 69,788 (1991 census)	Area 572 sq kms approximately
Per capita income	£7 793 (1991/92)
Gross national product	£549.3 million (1991/92)
Rate of inflation	4.3 per cent (1992 average)
Rate of unemployment	Males 5.4 per cent (1992 average) Females 2.7 per cent (1992 average)
Literacy rate	Assumed 100 per cent
Percentage of population speaking mother tongue, i.e. English	Assumed 100 per cent
Life expectancy	Males 71.5 years (1991) Females 79.9 years (1991)
Infant mortality rate	Males 11.25 per 1 000 (total 5) (1994) Females 6.68 per 1 000 (total 3) (1994)
Percentage of population under 15 and over 65 years of age	Males under 15 - 8.8 per cent Females under 15 - 8.5 per cent Males over 65 - 7.3 per cent Females over 65 - 10.9 per cent (1991)
Percentage of population in rural areas and in urban areas	Rural 26.1 per cent (1991) Urban 73.9 per cent (1991)
Percentage of households headed by women	28 per cent (1991)

II. GENERAL POLITICAL STRUCTURE

A. System of government

2. A Crown Dependency with a high degree of autonomy, the Island enjoys domestic, political and legislative competence through the ancient Manx Parliament, Tynwald. The United Kingdom Government is responsible for the conduct of the external relations and defence of the Island.

3. Dating back to Viking origins over one thousand years ago, Tynwald is the oldest continuous legislature in the world. It comprises two branches - the popularly-elected House of Keys and the Legislative Council.

4. The 24 Members of the House of Keys (MHKs) are elected every five years. The majority of MHKs are independents, and the virtual absence of party politics demands a high degree of consensus. This has contributed to the remarkable stability of the Manx system.

5. The persons entitled to vote in elections of Members of the House of Keys in any constituency are those who:

(a) Have attained the age of 18 years on 1 September in the year in which the register of electors is prepared;

(b) Are not subject to any legal incapacity to vote, or disqualification under any enactment for register;

(c) Are either Commonwealth citizens or citizens of the Republic of Ireland; and

(d) On 12 May of the year in which the register of election is prepared have their usual place of abode in such electoral area and have during the whole of the preceding 12 months had their usual place of abode in the Isle of Man.

6. No person may be registered to vote in more than one polling district or vote more than once in the same election.

7. The Legislative Council consists of eight members elected by the House of Keys for a term expiring at the end of February next following the fourth anniversary of the date of election (or period of election). In exercising this special function as an electoral college the house need not, but usually does, elect from its own members. In addition to the eight members of the Legislative Council (MLCs) elected by the House of Keys, the President of Tynwald, HM Attorney-General and the Lord Bishop are ex officio members. The Legislative Council generally acts as a chamber which revises bills which are initiated in the Keys.

8. The branches meet separately throughout the parliamentary year to enact legislation; they sit together as Tynwald Court for up to three days a month to debate matters of policy and to adopt financial resolutions. On 5 July each year, Tynwald Court assembles in the open air on Tynwald Hill, the Viking parliamentary site, to conduct parliamentary business and receive petitions for redress from residents of the Island.

9. Her Majesty the Queen as Lord of Man is Head of State. Her personal representative on the Island is His Excellency the Lieutenant Governor, who is appointed by the Crown for a five-year term. The functions of the Lieutenant Governor have diminished considerably since the war, but he still has important constitutional functions and a significant social role.

10. In recent years, the Island has introduced a ministerial system of government. The political head of the Manx Government is the Chief Minister, who is chosen by Tynwald from its own ranks after each general election. The Chief Minister selects his ministers who have responsibility for major government departments and, with the Chief Minister, form the Council of Ministers, the Manx Cabinet.

11. The Isle of Man has a special relationship with the European Union by virtue of Protocol 3 of the Act of Accession of the United Kingdom. This places the Island within Europe for the limited purposes of customs and the free movement of goods, but it contributes nothing to, and receives nothing from, EU funds.

B. The law

12. Lawyers in the Isle of Man are known as advocates and combine the roles of solicitors and barristers in England. Organized into partnerships, Manx advocates perform a wide range of work and have an exclusive right of audience in the Island's courts (although English barristers can be licensed to appear in certain cases). Other legal work (except conveyancing) can be undertaken in the Island by registered practitioners qualified to practise in other jurisdictions.

13. Although English law does not extend to the Isle of Man, the Manx legal system is based on the principles of English Common Law, like the legal systems of most Commonwealth countries. Manx criminal law was codified in the nineteenth century and is closely based on English law. In relation to contract, tort, family law and social security, Manx is very similar to English law. But in other respects Manx law has been developed to meet the Island's special circumstances, particularly with regard to direct taxation, company law and financial supervision.

14. As regards land law, many of the changes made in English law in recent times have not been followed in the Isle of Man and there are now significant differences between Manx and English conveyancing procedures. The Manx system is based on a Registry of Deeds.

15. The principal sources of Manx law are Acts of Tynwald (the Manx Parliament) and the Orders and Regulations made under these Acts. Tynwald has power to make laws on any subject, but it can only do so with the assent of the Queen, who is advised by the United Kingdom Government in this matter. The Parliament at Westminster still legislates for

the Island in respect of some subjects which are of common concern to the Isle of Man and the United Kingdom, such as defence, nationality and immigration. Although the Isle of Man is largely autonomous, the United Kingdom remains responsible for the Island's defence and international relations. EU law has direct application to the Isle of Man for very limited purposes.

16. The Island's High Court judges are the two Deemsters (a term dating from Viking times), who have jurisdiction over all the criminal and civil matters that in England would fall under the High Court, County Court and Crown Court.

17. The Manx Appeal Court, (the Staff of Government Division), consists of the Deemsters and the Judge of Appeal, a part-time position filled by an English Queen's Counsel. The final appeal, one that is rarely pursued, is to the Judicial Committee of the Privy Council in London.

18. The Island has its own lay magistrates (similar to their English counterparts) and also two stipendiary magistrates (the High Bailiff and Deputy High Bailiff) who also act as coroners of inquests and preside over the licensing court.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

Authorities having jurisdiction affecting human rights

19. Under the Constitution of the Isle of Man the possession of rights and freedoms is an inherent part of being a member of society. They can only be restricted by a democratic decision of Tynwald (the Manx Parliament) or exceptionally the Parliament of the United Kingdom. The role of either Parliament therefore is not to confer rights but to consider whether they need to be restricted balancing the needs of society against those of the individual.

Legal aid

20. A person in need of legal advice or legal representation in court may qualify for help with the costs out of public funds, either free or with a contribution according to his or her means. Civil legal aid is administered by a Legal Aid Committee established by Statute.

21. People whose income and savings are within certain limits are entitled to legal advice and assistance as it affects the applicant's particular circumstances.

22. Legal aid covers representation before a court and is available for most civil proceedings to those satisfying the financial eligibility conditions. If legal aid is granted the case is conducted in the normal way except that payments are made out of government funds by the Isle of Man Treasury.

23. In criminal proceedings a legal aid order may be made by the court concerned if it appears to be in the interests of justice and the defendant qualifies for financial help. An order must be made (subject to means) where a person is committed for trial on a murder charge.

24. Under the Legal Aid Act 1986 arrangements are made for duty advocates to be available to Courts of Summary Jurisdiction to provide initial advice and representation to unrepresented defendants. The services of a duty advocate are free.

25. The Isle of Man Board of Consumer Affairs provides free advice on consumer matters to members of the public.

Compensation for wrongful convictions/detention

26. Persons wrongfully convicted or persons detained in custody for any reason without lawful authority may apply to the Government of the Isle of Man for an ex gratia payment of compensation. They may also take legal action to recover damages.

The position of the victims of crime

27. Courts may order an offender, upon conviction, to pay compensation to the victim for personal injury, loss or damage resulting from an offence. The recovery of amounts awarded in compensation must be put ahead of the recovery of fines.

28. Where the police or other prosecution authorities decline to prosecute, victims may normally prosecute privately, but in practice seldom do so. Victims may also sue for damages in the civil courts. Simplified procedures are available to enable persons without legal knowledge to bring small claims for loss or damage.

29. (The European Convention on the Compensation of Victims of Violent Crime applies to the Isle of Man.)

Constitutional protection of human rights

30. The Isle of Man does not have a bill of rights or a formal written constitution. The system of Parliamentary government in the Isle of Man is the result of gradual evolution. The possession of rights and freedoms is regarded as an inherent part of being a member of society. They are not conferred by the Government, they already exist unless restricted in some specific way for the benefit of society as a whole.

Incorporation of human rights instruments/international legislation

31. The position is the same as in the United Kingdom. Treaties and conventions are not incorporated directly in domestic law. Where a change in the law is necessary to implement a treaty or convention the Government promotes legislation to do so. Such bills are subject to parliamentary procedures.

Enforcement by courts of human rights instruments

32. Courts in the Isle of Man interpret only those laws made by Parliament.

National machinery for implementation of human rights

33. The Data Protection Act 1986 creates a Data Protection Registrar and the Police Act 1993 creates a Police Complaints Commission.

Equal opportunities

34. Under the Sex Disqualification (Removal) Act 1921 no person may be disqualified by reason of their sex from the exercise of any public function or from appointment to any civil or judicial office or from entering or assuming or carrying on any civil profession or vocation.

35. The Isle of Man has a social security system which is closely modelled on the system applied in the United Kingdom.

Race relations

36. The Manx Government supports the principle that all people have the same rights and responsibilities. In a small territory such as the Isle of Man it has not proved necessary to introduce specific legislation.

Data protection

37. The Data Protection Act 1986, which is based on the United Kingdom Data Protection Act 1984, applies safeguards to the handling of personal data on computer. The 1981 Council of Europe Convention on Data Protection applies to the Isle of Man.

Complaints against the police

38. Provision for the handling of complaints against the police is made in section 9 of, and Schedule 1 to, the Police Act 1993 and in regulations under that Act.

39. The Act defines complaints as any complaint about the conduct of a police officer which is submitted by a member of the public and with his or her written consent.

40. The Chief Constable of the Isle of Man Constabulary is obliged, whenever a complaint is received, to record it and to arrange for it either to be resolved informally or, if it is not suitable for informal resolution, to be formally investigated.

41. An independent Police Complaints Commissioner is required to be appointed under the Act and must supervise the investigation of all complaints involving serious injury, corruption or offences specified in regulations. The Commissioner may also supervise the investigation of complaints if it is considered desirable in the public interest.

42. In the case of every investigation of a complaint the report is required to be sent to the Commissioner for his or her consideration and recommendations.

Information and publicity

43. Copies of published texts of United Nations human rights instruments may be obtained through bookshops.

44. The Isle of Man's reports to the bodies established under various United Nations human rights instruments to monitor State party compliance with treaty obligations are prepared by the Isle of Man Government, drawing on information and expertise from Government departments and outside sources.

Annex XII

BAILIWICK OF JERSEY

I. LAND AND PEOPLE

1. The Island's resident population, as at March 1991 (the date of the last Census) was 84,082 made up as follows:

Jersey born	43 331 (52 per cent)
Born elsewhere in the British Isles	30 972 (37 per cent)
Born in Portugal	3 439 (4 per cent)
Born elsewhere in the European Union	4 030 (5 per cent)

2. Other background statistical information, using the most up-to-date figures available, is as follows:

Per capita income	US$ 26 812[a]
Gross domestic product	US$ 2 258 million[a]
Rate of inflation	4.4 per cent (1992/93)
External debt (net public sector debt)	Nil
Literacy rate	Not available - assumed to be close to 100 per cent
Unemployment rate	Males - 3 per cent Females - 1 per cent
Percentage of population speaking English	Not available - assumed to be close to 100 per cent
Life expectancy	Males - 72 years Females - 78 years
Fertility rate	Total period fertility rate - 1.55 (1990)
Infant mortality rate[b]	2.6 per 1 000 (1992)

Maternal mortality rate	Nil per 1 000 (1987-1992)
Percentage of population aged over 65 (source: 1991 Census)	Males 10.7 per cent Females 15.7 per cent
Percentage of population aged under 15 (source: 1991 Census)	Males 16.2 per cent Females 14.8 per cent
Percentage of population in rural areas	Not applicable
Percentage of population in urban areas	Not applicable
Percentage of households headed by women	29.1 per cent

II. GENERAL POLITICAL STRUCTURE

Background

3. The Bailiwick of Jersey, 45 miles square, is the largest and most populated of the Channel Islands and lies in the English Channel, 14 miles from the north-west coast of France and 90 miles south of England.

4. Its history has flowed from this geographical position. As part of the feudal state of Normandy, it became a possession of the English Crown in 1066, when William, Duke of Normandy, defeated King Harold and merged the kingdoms of England and Normandy. Although continental Normandy was lost to the English Crown in 1204, the Channel Islands have remained as the oldest overseas Crown dependencies.

5. The Constitution of the Island has, in turn, been forged by its history and has evolved over many centuries. From 1204 until the Battle of Waterloo in 1815, England was constantly at war with France, and Jersey was under constant threat of invasion by French forces. Nevertheless the people of Jersey demonstrated firm loyalty to the English Crown, and stout resistance to the French, virtues which were rewarded by successive English sovereigns and later the United Kingdom Parliament in the grant of increasing rights of self-government.

6. The Bailiwick of Jersey is, and remains, a dependency of the British Crown. The Island, through its elected legislature, the States of Jersey, is internally self-governing, except that laws adopted by the States require the sanction of Her Majesty in Council. It is the duty of the Secretary of State for Home Affairs, as the member of the Privy Council primarily concerned with Island affairs, to advise Her Majesty on each legislative measure before it is submitted to the Privy Council for royal sanction.

The Assembly of the States - Jersey's legislature

7. The foundations of the present political arrangements in Jersey were laid in 1948 with the passing of the Assembly of the States (Jersey) Law 1948. That Law was superseded by the States of Jersey Law 1966. There are 53 members of the States, as follows:

(i) 12 Senators, elected for a period of 6 years by registered voters throughout the Island;

(ii) 12 Connétables, who are the heads of the administrative parishes into which the Island is divided, and are elected for a period of 3 years by registered voters in their parish;

(iii) 29 Deputies, each representing a particular electoral district, and elected for a period of 3 years by the registered voters of the particular electoral district.

8. In addition there are non-elected members:

(i) The Bailiff, who is President of the Assembly and acts as its Speaker (in the Bailiff's absence this role may be performed by the Deputy Bailiff);

(ii) The Lieutenant-Governor, as representative of the Crown;

(iii) The Dean of Jersey, representing the Church;

(iv) The Attorney-General and Solicitor General.

9. All the non-elected members have the right to speak in the States but not to vote. In practice the President speaks only in his capacity as Speaker, and there are conventional restrictions on the occasions and subjects on which the other non-elected members would exercise their right to speak.

Administration

10. The day-to-day administration of the Island is conducted by Committees of the States, comprising a President and usually six other members, all of whom are elected States Members. All Committees are appointed by the States Assembly by simple majority vote of all the members. Each Committee has responsibility, delegated by the States Assembly, for an area of public business, such as finance, education, public health, planning and land use, public services, tourism and so forth. At present there are 28 such Committees.

11. In addition there is administration at parish level of such items as upkeep and maintenance of local roads, some street lighting, refuse collection, the honorary police force and the issuing of various licences. A parochial rate is levied to defray the expenses of these activities.

Political elections

12. A general election is held every 3 years, in the months of October (Senators) and November (Deputies) when the terms of office of 6 of the 12 Senators, and all 29 Deputies, expire. For historical reasons, the term of office of each Connétable expires on the third anniversary of his election. Elected members are all eligible for re-election.

13. Unless otherwise disqualified, any British subject, born in the Island or ordinarily resident there for the 2 years preceding the election, may stand for election if he has attained the age of 21 (States of Jersey Law 1966).

14. Voters are registered in the parish in which they live. To be eligible for registration as an elector, a person must have attained the age of 18, be resident in the parish on 1 March in the relevant year and be a British subject or a citizen of the Republic of Ireland (Franchise (Jersey) Law 1968, as amended).

III. THE LAW

Administration

15. The Judiciary in the Bailiwick of Jersey is entirely independent of the States of Jersey and is not subject to political direction or control. Responsibility for the administration of justice rests with the Bailiff (the Chief Justice) and the Attorney-General. Also concerned is the Defence Committee which has certain responsibilities in relation to the States of Jersey Police.

16. The Bailiff is the President of the Royal Court and the President of the Court of Appeal. He is concerned with court procedure and is responsible for the administration of all Courts in the Bailiwick.

17. The Defence Committee has responsibilities under the Police Force (Jersey) Law, 1974. It is the duty of the Committee to secure the maintenance of an adequate and efficient police force in the Island, and for that purpose the Committee is empowered to provide all necessary facilities, including premises and equipment. The Committee is also required to determine the ranks in the force and appropriate scales of pay for each rank, and to provide for any other matter considered necessary for the proper administration of the force, including disciplinary matters.

18. The Police Force (Jersey) Law 1974 also provides for the continuance of the honorary police force which functions in parallel with the States of Jersey Police Force. The Honorary Police were, for several centuries, the traditional form of policing in Jersey. The force is organized on a parish basis, under the control of the Connétable of the parish. Officers are elected by residents of the parish and their jurisdiction is restricted to the parish for which they are elected. The Attorney-General has overall responsibility for the proper functioning of the honorary police as a whole. Responsibility for the administration of justice in the Bailiwick is shared between the Bailiff and the Home Office. The Secretary of State for Home Affairs is the Privy Councillor responsible to the Crown for the good government of the Bailiwick.

The Home Secretary is also responsible for advising the Queen on the exercise of the royal prerogative of mercy to pardon a person convicted of a crime or to remit all or part of a penalty imposed by a Court.

19. The Attorney-General and the Solicitor General are the legal advisers to the Crown on Jersey law, the legal advisers to the States of Jersey and to Committees of the States, and represent the States before all courts and tribunals. They are senior advocates and are members of the States of Jersey ex officio. As well as exercising various civil law functions, the Attorney-General has final responsibility for enforcing the criminal law. He has also responsibility for the Honorary Police of the Island. The Attorney-General is concerned with instituting and prosecuting certain types of criminal proceedings, and must exercise an independent discretion in that respect. The Solicitor General is, in effect, the deputy of the Attorney-General.

Criminal courts

20. In Jersey, the initial decision to begin criminal proceedings usually lies with the Connétable or a Centenier of a Parish. The Connétable and his Centeniers are senior members of the Honorary Police. Once a criminal charge has been brought, the case is presented before the Police Court by the Centenier. Proceedings in the Police Court are inquisitorial and the responsibility for leading the evidence rests with the Magistrate, who is known as a Juge d'Instruction. If the case is sufficiently serious, the Magistrate will commit the accused for trial before the Royal Court. In that event the Attorney-General receives all the papers and presents the accused before the Court. All criminal proceedings in Jersey take place under the general supervision of the Attorney-General who has the power to enter a nolle prosequi and to direct Centeniers to bring a criminal charge in appropriate cases.

21. In 1991 the States passed the Investigation of Fraud (Jersey) Law, 1991 which vests in the Attorney-General certain powers of investigation which are very similar to those enjoyed by the Director of the Serious Fraud Office in England.

22. Criminal offences may be grouped into three categories, namely, crimes, délits and contraventions. The distinction between crimes and délits is now only of historical interest and has no significant impact. Both crimes and délits are common-law offences. Contraventions are offences which have been created by statute. The mode of trial differs as between common-law offences and statutory offences. Provided that a case is sufficiently serious for the Magistrate to have exercised his discretion to commit the accused for trial before the Royal Court, an accused person enjoys the right to trial by jury only in respect of common-law offences. In respect of statutory offences the trial will take place before the Inferior Number of the Royal Court which is constituted by the Bailiff and two Jurats. There are 12 Jurats of the Royal Court whose office is very ancient. The Jurats have the responsibility for judging factual issues and for determining sentence in criminal cases. The Inferior Number has power in criminal cases to impose sentences of up to two years' imprisonment. Beyond that level the case must be referred to the Superior Number of the Royal Court which is constituted by the Bailiff and at least seven Jurats. The powers of the Superior Number of the Royal Court are not limited. The Royal Court has jurisdiction to try all criminal cases except treason.

23. The Police Court is presided over by the Juge d'Instruction who is appointed by the States of Jersey and must be one of the following:

(i) A Jurat of the Royal Court;

(ii) A Crown Officer;

(iii) An advocate or solicitor of the Royal Court who has practised as such for at least 10 years;

(iv) A person who has exercised the functions of a judge in the Commonwealth;

(v) A person who has practised as a barrister or solicitor in England for at least 10 years.

24. Cases involving people under 17 are heard in the Juvenile Court. This is a specially constituted court comprising the Juge d'Instruction and two Juvenile Magistrates. There is a panel of Juvenile Magistrates which is appointed by the Royal Court. The Juvenile Court must sit apart from the Police Court or must be held at a different time. Only limited categories of people may be present and media reports must not identify any juvenile appearing either as a defendant or a witness. Where a young person under 17 is charged jointly with someone of 17 or over, the case is heard in the Police Court or the Royal Court.

25. The Royal Court deals with trials of the more serious cases and with appeals from the Police Court. It is presided over by the Bailiff who sits with two Jurats to constitute the Inferior Number and at least seven Jurats to constitute the Superior Number.

Appeals

26. A person convicted by the Police Court may appeal to the Royal Court against the sentence imposed if he has pleaded guilty, or against the conviction or sentence imposed if he has pleaded not guilty. Where the appeal is on a point of procedure of law, either the prosecution or the defendant may appeal from the Police Court to the Royal Court by way of case stated.

27. Appeals from the Royal Court, either against conviction or against sentence, are made to the Court of Appeal. The Judicial Committee of the Privy Council is the final appeal court for all cases. Before a case can go to the Judicial Committee, the Court hearing the previous appeal must certify that it involves a point of law of importance and either that Court or the Judicial Committee must grant leave for the appeal to be heard.

28. The Attorney-General may seek the opinion of the Court of Appeal on a point of law which has arisen in a case where a person tried on indictment has been acquitted. The acquittal in the original case is not affected, nor is the identity of the acquitted person revealed without his or her consent.

Trial

29. Criminal trials in Jersey take the form of a contest between the prosecution and the defence. Since the law presumes the innocence of an accused person until guilt has been proved, the prosecution is not granted any advantage, apparent or real, over the defence. A defendant has the right to employ a legal adviser and may be granted legal aid. If remanded in custody, the person may be visited by a legal adviser to ensure a properly prepared defence. During the preparation of the case the prosecution usually tells the defence of relevant documents which it is not proposed to put in evidence and discloses them if asked to do so. The prosecution has a duty to inform the defence of witnesses whose evidence may help the defendant and whom the prosecution does not propose to call. The defence or the prosecution may suggest that the defendant's mental state renders him or her unfit to be tried. If the Court decides that this is so, the defendant is admitted to a specified hospital.

30. Criminal trials are normally in open court and rules of evidence (concerned with the proof of facts) are rigorously applied. If evidence is improperly admitted, a conviction can be quashed on appeal. During the trial the defendant has the right to hear and cross-examine witnesses for the prosecution, normally through his advocate; to call his or her own witnesses who, if they will not attend voluntarily, may be legally compelled to attend; and to address the court in person or through his advocate, the defence having the right to the last speech at the trial. The defendant cannot be questioned without consenting to be sworn as a witness in his or her own defence. When he or she does testify, cross-examination about character or other conduct may be made only in exceptional circumstances; generally the prosecution may not introduce such evidence.

Jury

31. In jury trials the Bailiff decides questions of law, sums up the evidence for the Jury and instructs it on the relevant law, and discharges the accused if he is acquitted. If he is convicted, sentence is passed by the Jurats. Only the jury decides whether the defendant is guilty or not guilty. If the jury cannot reach a unanimous verdict, the Bailiff may direct it to bring in a majority verdict provided that, in the normal jury of 12 people, there are not more than 2 dissentients. If the jury returns a verdict of "not guilty", the prosecution has no right of appeal and the defendant cannot be tried again for the same offence. In the event of a "guilty" verdict, the defendant has a right of appeal to the Court of Appeal.

32. A jury is completely independent of the judiciary. Any attempt to interfere with a jury once it is sworn would be punishable as a contempt of court.

33. Under the law on criminal procedure the defence has the right to challenge peremptorily up to two members of a jury without giving any reason. The defence and the prosecution have the right to challenge potential jurors for cause.

34. People between the ages of 18 and 65 whose names appear on the electoral register, with certain exceptions, are liable for jury service and their names are chosen at random. Persons disqualified from jury service include those who have been convicted of serious crime or are awaiting trial, and persons under curatorship.

The Coroner

35. The Viscount, who is the Chief Executive Officer of the Royal Court, exercises the functions of coroner. He investigates violent and unnatural deaths or sudden deaths where the cause is unknown. Deaths may be reported to the Bailiff by doctors, the police or members of the public. If the death is sudden and the cause unknown, the Bailiff will direct that a post-mortem examination takes place. If, after a post-mortem examination has been made, there is uncertainty as to how the deceased met his death, the Bailiff will order an inquest. It is the duty of the Viscount, who sits with a jury of 12 men, to establish how, when and where the deceased died.

The civil law

36. The main subdivisions of the civil law in Jersey are:

Family law;

The law of property;

The law of succession; and

The law of obligations.

Other branches of the civil law include constitutional and administrative (particularly concerned with the use of executive power), industrial, maritime and ecclesiastical law.

Civil courts

37. The limited civil jurisdiction of the Magistrate extends to making orders in separation and maintenance cases. The Magistrate also has jurisdiction in cases of small claims where the amount at issue does not exceed £2,500. The Magistrate also has the power to order evictions from property in certain cases.

38. The granting of liquor licences is the responsibility of the Licensing Assembly which is composed of the Lieutenant-Governor, Bailiff and Jurats.

39. Civil cases beyond the jurisdiction of the Petty Debts Court are heard by the Royal Court. The Royal Court, when sitting as a civil court, deals with all civil matters including hire purchase, adoption and divorce. The Royal Court is again constituted for civil cases by the Bailiff and two Jurats.

Appeals

40. Appeals on points of law from the Petty Debts Court are heard by the Royal Court. Appeals from the Royal Court are heard by the Court of Appeal. Appeal from the Court of Appeal lies to the Judicial Committee of the Privy Council.

Civil proceedings

41. In Jersey, civil proceedings are instituted by the aggrieved person. No preliminary inquiry on the authenticity of the grievance is required. Actions in the Royal Court are usually begun either by a statement of claim (known as an Order of Justice) or by simple summons served on the defendant by the plaintiff. A defendant intending to contest the claim informs the Court. Documents setting out the precise question in dispute (the pleadings) are then delivered to the Court. Proceedings in the Petty Debts Court are initiated by a summons served on the defendant; subsequent procedure is rather simpler than in the Royal Court.

42. In divorce proceedings, evidence must be given in open court by the petitioner whether the case is defended or undefended, and a decree of divorce must be pronounced in open court.

43. Civil proceedings, as a private matter, can usually be abandoned or ended by compromise at any time. Actions brought to Court are tried without a jury, although the Bailiff sits with two Jurats, who are the judges of fact.

44. A civil action in the Petty Debts Court is begun by summons which is served on a defendant by a plaintiff or his lawyer. This contains particulars of the complaint and the date on which it will be heard. Parties and witnesses give their evidence at the court hearing. All proceedings before the Petty Debts Court are heard by the Magistrate.

45. Judgements in civil cases are enforceable through the authority of the Court. Most are for sums of money and may be enforced, in cases of default, by seizure of the debtor's goods or by a court order requiring an employer to make periodic payments to the Court by deduction from the debtor's wages. Other judgements can take the form of an injunction restraining someone from performing an illegal act. Refusal to obey a judgement may result in imprisonment for contempt of court. Arrest under an order of committal may be effected only on a warrant.

46. Normally the Court orders the cost of an action to be paid by the party losing it, but, in the case of family law maintenance proceedings, the Court can order either party to pay the whole or part of the other's costs.

47. There also exists, as a useful survivor of the Channel Islands' Norman heritage, the action of "clameur de haro". This is an ancient way of instituting legal proceedings to redress an alleged infringement of rights of property. The aggrieved person, by reciting a set form of words, is able to obtain an immediate injunction restraining the action complained of without the assistance or authority of an officer of justice. The person against whom the "clameur" is raised must immediately cease what he is doing and the Attorney-General is informed and joined in the action which must proceed to trial.

Administrative review

48. Under the Administrative Decisions (Review) (Jersey) Law, 1983 any person who is aggrieved by any decision made, or any act done or omitted, relating to any matter of administration by any committee or department of the States or by any person acting on behalf of

any such committee or department, may apply to the Greffier of the States to have the matter reviewed by a Board of Administrative Appeal. Boards of Administrative Appeal are constituted from a panel of senior members of the States. A Board has power to call for documents from any committee, department or officer or employee of any committee or department and to hear any person in connection with any complaint. After completing its inquiry, a Board reports its findings in writing to the complainant and to the committee, department or person concerned. The Board may request the committee, department or person concerned to reconsider the matter which it or he has decided and to inform the Board within a specified time of the steps which have been taken to reconsider the matter and the result of that reconsideration. The provisions of this Law are in addition to and not in derogation of any other remedy which is available to a complainant. Any expenses incurred in carrying out the provisions of the Law are defrayed out of the annual income of the States.

IV. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Authorities having jurisdiction affecting human rights

49. As in the United Kingdom, the possession of rights and freedom is an inherent part of being a member of society. Such rights and freedoms can only be restricted by a democratic decision of the States of Jersey (Jersey's elected legislature), whose role, like the role of the United Kingdom Parliament, is not to confer rights but to consider whether they need to be restricted, balancing the needs of society against those of the individual. The following paragraphs set out the mechanisms and legal safeguards through which human rights in Jersey are protected.

B. Remedies, compensation and rehabilitation

Legal aid

50. The system of legal aid in Jersey is not statutory. It is a long-standing tradition of the legal profession. All lawyers accept the system as an obligation, but they accept it voluntarily. Anyone who requires the services of a lawyer, but has difficulty in getting them because he cannot pay, or, for any other reason, is unable to find legal representation, may apply for legal aid. The application is made to the Acting Bâtonnier, who is an advocate appointed by the Bâtonnier to administer the legal aid scheme. If he is satisfied that legal aid ought to be granted, the Acting Bâtonnier gives the applicant a legal aid certificate addressed to a lawyer, and tells the applicant to get in touch with that lawyer.

51. An applicant is not required to show, before he is granted a legal aid certificate, that his case has any particular degree of strength. If the Acting Bâtonnier is satisfied simply that the applicant is in a position in which he needs legal advice, he normally grants a certificate, but not if he thinks the applicant wishes to do something which would be an abuse of the legal process or is totally devoid of merit.

52. All advocates and solicitors of less than 15 years' standing are liable to be nominated by the Acting Bâtonnier for legal aid cases, but, in a case of exceptional gravity, a lawyer of more than 15 years' standing with suitable experience is nominated.

53. Legal aid is not necessarily free. The Acting Bâtonnier explains this to the applicant when issuing the certificate. Since the right to legal aid does not depend upon the level of the applicant's means, the Acting Bâtonnier makes no detailed investigation of means. Some lawyers never charge a fee for legal aid work. Those who do will make some investigation of means in order to decide how much it is reasonable to charge the applicant. In addition to being informed that their nominated lawyer may make a reasonable charge, applicants are told by the Acting Bâtonnier that they can refer the matter to him if they are asked to pay a fee which they consider unreasonable. When a dispute of this kind is referred to the Acting Bâtonnier, he investigates the matter and puts it before the Bâtonnier, who decides whether the fee charged is reasonable or should have been lower.

54. Legal aid may be obtained in both civil and criminal cases. In criminal cases there is an alternative method of applying in the Police Court. A defendant brought before the Police Court can apply for legal aid by making a simple statement of his means and swearing to it before the Magistrate. The statement is sent by the Court to the Acting Bâtonnier, and he then nominates a lawyer.

55. Free advice is also available from the Citizens Advice Bureau.

Compensation for wrongful conviction/detention

56. There is no statutory provision for the payment of compensation for wrongful conviction or detention, but compensation has been paid on an ex gratia basis. In the case of unlawful detention, damages may be recovered by means of an action at common law.

The position of the victims of crime

57. The Criminal Justice (Compensation Orders) (Jersey) Law 1994 provides that a court, instead of or in addition to dealing with a convicted person in any other way, may make an order requiring that person to pay compensation for any personal injury, loss or damage resulting from the offences committed. The compensation order will be for such amount as the court considers appropriate, having regard to any evidence given and any representations made by or on behalf of the offender or any person who appears to the court to have suffered any personal injury, loss or damage resulting from the offence.

58. There is no limit on the amount of an order made by the Royal Court, but the compensation to be paid under a compensation order made by the Police Court or Juvenile Court in respect of any one offence cannot exceed two thousand pounds, although that limit may be altered by Regulations.

59. If the offender has insufficient means to pay both an appropriate fine and appropriate compensation, the court must give preference to compensation, and monies received from the offender must be applied towards the payment of the compensation in full before being applied towards payment of a fine.

60. Victims of crime may also sue for damages in the civil courts.

61. The Criminal Injuries Compensation Scheme provides that the Board established thereunder may make payments of compensation from public funds in any case where the applicant has sustained personal injury directly attributable to:

(a) A crime of violence;

(b) The apprehension or attempted apprehension of an offender;

(c) The prevention or attempted prevention of an offence; or

(d) The giving of help to a police officer who is engaged in any of these activities.

"Personal injury" includes any disease, any harm to a person's physical or mental condition and pregnancy.

C. Constitutional protection of human rights

62. Jersey does not have a bill of rights or written constitution. The system of parliamentary government in Jersey is a result of a gradual evolution spanning several centuries. Under Jersey's constitutional arrangements the possession of rights and freedoms is an inherent part of being a member of our society. Rights, therefore, are not conferred by the Government; they already exist unless the States of Jersey decides that the needs of society are such that they should be restricted in some specific way.

D. Incorporation of human rights instruments into national legislation

63. Treaties and conventions are not incorporated directly into domestic law, as happens in some countries. If appropriate legislation is not already in place, treaties and conventions are implemented in Jersey by the enactment of the necessary legislation by the States of Jersey, or, in some cases, by the extension to Jersey by Order in Council of United Kingdom legislation which has been introduced by the United Kingdom Government for the same purpose.

E. Enforcement by courts of human rights instruments

64. Courts in Jersey interpret only those laws passed by the States of Jersey or extended to Jersey as indicated in the last paragraph.

F. Machinery for implementation of human rights

Data protection

65. At the request of the Jersey Authorities, the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data was extended to Jersey by a declaration made by the United Kingdom Government on Jersey's behalf.

66. In accordance with the objective of that Convention, the Data Protection (Jersey) Law 1987, which closely follows the United Kingdom Data Protection Act 1984, established a Data Protection Registrar, provided for the maintenance of a register of personal data users and computer bureaux, and conferred powers on the Registrar to ensure that personal data are used in accordance with the principles of the Convention. The Law also gives data subjects certain legal rights, including a right of access to their personal data, and, in certain circumstances, a right to compensation.

Complaints against police

67. This subject is undergoing a comprehensive review. The provisions which are currently in force for dealing with complaints against members of the States of Jersey Police Force are contained in the Police Force (General Provisions) (Jersey) Order 1974.

68. That Order provides that where a complaint against a member of the Force is received from a member of the public the matter shall be referred to an investigating officer of, or above, the rank of Inspector, but not the Chief Officer or Deputy Chief Officer.

69. The Order goes on to provide that the Chief Officer, after considering the report of the investigating officer and any statement made by the member of the Force against whom the complaint has been made, shall decide whether that member shall be charged. If charged, the accused is ordered to appear at a hearing. The case is heard by the Chief Officer, or in a case in which it appears appropriate to the Chief Officer, by the Chief Officer of some other police force. The complainant is entitled to attend the hearing, and may require the Chief Officer to put questions to the accused. At the discretion of the Chief Officer the complainant himself may be allowed to put questions to the accused.

70. The Chief Officer, at the conclusion of the hearing, or, where he has remitted the case to some other Chief Officer, on receiving the report of that Chief Officer, must decide either to dismiss the case or to impose one of the following punishments:

(i) Dismissal from the Force;

(ii) Requirement to resign from the Force as an alternative to dismissal, either forthwith or on such date as may be specified in the decision;

(iii) Reduction in rank;

(iv) Reduction in rate of pay for such period, not exceeding 12 months, as shall be specified in the decision;

(v) Fine;

(vi) Reprimand;

(vii) Caution.

71. Provision is made in the Order for appeal to the States of Jersey Defence Committee by a member of the Force against the finding of the Chief Officer or the punishment imposed.

72. The disciplinary code for members of the honorary police is also under review as part of the procedure described above.

Equal opportunities and race relations

73. On 29 January 1991, the States of Jersey endorsed the principle that all forms of discrimination whether against women or men should be removed; and agreed to set up a Special Committee, including non-Members of the States, to investigate the present situation and to make such recommendations to the States as it thought appropriate to ensure that:

(i) Men and women receive equal pay for work of equal value;

(ii) Female employees are entitled to a reasonable minimum of maternity leave; and

(iii) Any other forms of discrimination between men and women are removed as soon as practicable.

74. Since the creation of the Special Committee, a wide range of issues relating to equal opportunities has been considered, States approval of a code of maternity rights has been obtained, and, by the enactment of the Wills and Successions (Jersey) Law 1993, the States have also redressed the discrimination against women inherent in Jersey's inheritance laws.

75. The Special Committee having completed its task of investigating and making specific recommendations, it is now being proposed that the continuing role of promoting equal opportunities should be the responsibility of a permanent Committee of the States, with the wider remit of "policy responsibility for the promotion of equal opportunities for all persons in all areas of Jersey economics and social life".

V. INFORMATION AND PUBLICITY

76. The insular authorities have not considered it necessary to make special efforts to promote general awareness of human rights instruments. This consideration is reflective of Jersey's status with regard to the particular conventions, of which Jersey is not a State party. Texts of the conventions are published by Her Majesty's Stationery Office in the United Kingdom and are readily available on order in Jersey. With a view to informing better

the general public of the extent to which international conventions generally (including those affecting human rights) apply to Jersey, the responsible Committee decided recently to report annually to the States through the medium of the annual Strategic Policy Report and Action Plan. This is effectively the government policy plan, which is the subject of a special States debate each year and provides the overall blueprint for the activities of the States and its administrative Committees year by year.

Notes

[a] Conversion rate - £0.57 = US$ 1.00.

[b] Infant mortality rates are very low, ranging between two to five deaths annually in recent years.

Annex XIII

BAILIWICK OF GUERNSEY (COMPRISING GUERNSEY, ALDERNEY, SARK, HERM, JETHOU AND BRECQHOU)

I. LAND AND PEOPLE

1. The Channel Islands are a group of islands, islets and offshore rocks located in the English Channel within the Gulf of St. Malo off the north-west coast of France. Although the Islands form part of the British Isles they do not form part of the United Kingdom. They are divided into the Bailiwicks of Guernsey and Jersey. The Bailiwick of Jersey comprises the largest and most southerly island of the group and two small reefs of islets and rocks known respectively as the Ecrehous and the Minquiers.

2. The Bailiwick of Guernsey (hereafter referred to as the "Bailiwick") comprises the remaining islands of Guernsey, Alderney, Sark, Herm, Jethou, Brecqhou, together with their associated islets and offshore rocks. The inhabited islands are as follows:

	Population (1996 census)	Area (sq miles)
Guernsey (including Herm, Jethou and Lihou)	58 681	25.11
Alderney	2 147	3.07
Sark (including Brecqhou)	575	2.11
Entire Bailiwick	61 403	30.29

3. The Bailiwick is a dependency of the Crown (being neither part of the United Kingdom nor a colony) and enjoys full independence, except for international relations and defence which are the responsibility of the United Kingdom Government. Guernsey, Alderney and Sark are each governed by separate elected Legislative Assemblies, the actual day-to-day administration, however, being conducted through various committees formed predominantly by members elected from the Legislatures. The Committees are given specific portfolios of responsibilities and are supported by an efficient, skilled and dedicated civil service.

4. Background statistical information, using the most up-to-date figures available, in relation to the Bailiwick, is as follows:

Per capita income	£19 521 (1999 estimate)
Gross national product	£1 146 million (1999 estimate)
Rate of inflation	3.8 per cent (March 2000)
External debt	None
Rate of unemployment	0.36 per cent (December 1999)

Literacy rate	Not available - assumed to be approximately 100 per cent
Percentage of population speaking mother tongue	Not available - assumed to be approximately 100 per cent
Life expectancy	Males 75.9 years Females 80.6 years
Infant mortality rate	3.0 per 1 000 births
Maternal mortality rate	None (1997)
Fertility rate	1.56
Percentage of population	Males under 15 - 9.0 per cent Females under 15 - 8.6 per cent Males over 65 - 6.3 per cent Females over 65 - 9.4 per cent (1996 census)

II. GENERAL POLITICAL STRUCTURE

A. System of government

5. The system of government in the Bailiwick has evolved over a long period from origins of greater antiquity. Nevertheless, the system is based upon the democratic principle, and the authority of each Legislative Assembly in Guernsey, Alderney and Sark is undisputed in each respective Island. The system of government reflects the conservative and law-abiding characteristics of the Bailiwick community.

The Crown and the Bailiwick

6. The British Crown retains ultimate responsibility for the good government of the Bailiwick acting through the Privy Council on the recommendation of Ministers of the United Kingdom Government in their capacity as Privy Councillors. The United Kingdom's Home Secretary is the member of the Privy Council primarily concerned with the affairs of the Bailiwick and is the channel of communication between the Bailiwick, the Crown and the United Kingdom Government. He ensures that the Bailiwick's legislative measures are scrutinized, and that there is consultation with any other government Ministers who may be concerned, including, if necessary, the Law Officers of the Crown, before the measures receive the Royal Assent.

The Bailiwick and Parliament

7. The Bailiwick is not represented in the United Kingdom Parliament and Acts of Parliament do not apply automatically to it. However, when it may be necessary for

United Kingdom legislation to be applied in the Bailiwick, consultations are held between the United Kingdom Government and the Bailiwick Authorities concerning not only the content and purpose of the legislation, but also the appropriate method for applying the legislation in the Bailiwick.

Constitutional relationship with the United Kingdom

8. The constitutional and economic relationship between the United Kingdom and the Bailiwick was examined by a Royal Commission appointed in 1969. It accepted the convention that the United Kingdom Parliament does not legislate on domestic matters for the Bailiwick without the consent of the Bailiwick Authorities, but nevertheless concluded that the United Kingdom must have powers in the last resort to intervene in any Bailiwick matter, including power to legislate, so long as it remains responsible for the external relations of the Bailiwick and for its good government.

9. "Good government" was defined by Lord Bach in the British House of Lords on 3 May 2000 as meaning that "in the circumstances of a grave breakdown or failure in the administration of justice or civil order, the residual prerogative power of the Crown could be used to intervene in the internal affairs of the Channel Islands and the Isle of Man".

Constitutional relationship with the European Union

10. The position of the Bailiwick was further examined when the United Kingdom Government applied in 1971 to join the European Economic Community. The negotiated settlement granted the Channel Islands, of which the Bailiwick is an integral part, a special relationship with the European Community by virtue of Protocol 3 to the Treaty of Accession. The effect of this Protocol is that the Islands of the Bailiwick are within the Common Customs Area and the Common External Tariff of the European Community, and consequently enjoy access to member States' physical exports of agricultural and industrial products without tariff barriers. However, the remaining clauses of the EC Treaties do not apply to the Channel Islands and therefore for all purposes other than customs they are effectively "third countries". The coming into effect of the Treaty on European Union on 1 November 1993 has not altered the constitutional position as enshrined by Protocol 3 to the Treaty of Accession.

11. Protocol 3 secured and formalized the Bailiwick's constitutional relationship with the United Kingdom within the European Economic Community. This cannot be changed unless the Protocol is changed, and to change the Protocol requires the unanimous agreement of all 12 member States of the European Union as well as the consent of the people of the Channel Islands.

Offices held under the English Crown

12. The offices held under the Crown either within the Bailiwick or in Guernsey are those of Lieutenant-Governor, Bailiff, Deputy Bailiff, Procureur (Attorney-General), Comptroller (Solicitor-General), Greffier, Receiver-General, Sheriff and Sergeant.

13. The Lieutenant-Governor is the Queen's personal representative in the Bailiwick and serves as the official channel of communication between the Crown and the Bailiwick Authorities. He is Commander-in-Chief in the Bailiwick, though the duties relating thereto only arise in times of hostilities.

14. The Bailiff is the head of the judiciary and non-political presiding officer of the Island's parliament. Traditionally is the defender and upholder of the immunities and privileges of the Island. His is also, with the Lieutenant-Governor, a channel of communication between the Guernsey Government and the Crown. He is assisted in his duties by the Deputy Bailiff.

15. The Procureur and Comptroller are legal advisers to the Crown and to all three Legislative Assemblies of Guernsey, Alderney and Sark. The Procureur and to a lesser extent the Comptroller are also responsible for criminal proceedings and for the drafting of legislation. Both are debarred from private practice. They act independently of government.

16. The Greffier is clerk to both the Legislature and the Judiciary in Guernsey. He also serves as Registrar-General of births, deaths and marriages in Guernsey and Sark.

17. The Receiver-General is concerned with the collection of and accounting for dues to the Crown and generally with Crown revenues throughout the Bailiwick. He acts under the directions of the Lords of Her Majesty's Treasury.

18. The Sheriff and Sergeant are officers of the Legislature and Judiciary in Guernsey. The Sheriff is responsible for executing the judgements and sentences of the courts and for assisting in the maintenance of order in the courts and in the Island's Legislative Assembly. The Sergeant is responsible for serving summonses and other legal process in Guernsey, acts as judicial attorney for persons absent from the Island, and discharges such other duties as may be assigned to him by the courts and the Legislative Assembly.

Powers of each Legislative Assembly

19. The government of the Bailiwick is administered by three separate jurisdictions. Guernsey, Herm and Jethou are administered by the States of Deliberation, Alderney by the States of Alderney, and Sark and Brecqhou by the Chief Pleas of Sark. However, the States of Guernsey exercise financial and administrative responsibility for certain public services in Alderney, and apply in that Island the Guernsey scale of taxes, duties and imposts which accrue to Guernsey revenue, as well as such legislation, with any necessary modifications, to those services for which Guernsey has assumed responsibility. Guernsey has responsibility for the airfield immigration, police, social services, health, education and adoption in Alderney.

20. The Legislative Assemblies are responsible for initiating domestic legislation, determining levels of expenditure and taxation, establishing fiscal and economic policy and generally exercising good government. Although each Legislative Assembly enjoys complete independence from the United Kingdom Parliament, both to legislate and to levy taxes, subject only to the British Crown's ultimate responsibility for the good government of the Bailiwick (see para. 9).

Composition of each Legislative Assembly

Guernsey

21. The States of Guernsey are constituted under the Reform (Guernsey) Law, 1948, as amended, and consist of two bodies namely, the States of Deliberation and the States of Election. The only function of the States of Election is to act as an Electoral College for Jurist, the office of which is somewhat similar to that of a justice of the peace in the United Kingdom.

22. The States of Deliberation is Guernsey's legislative assembly deriving its authority and powers from the Common Law and from the Reform (Guernsey) Law, 1948, as amended. It comprises the Bailiff as ex officio President, 12 Conseillers who are regarded as the most senior and experienced members of the States, 33 People's Deputies, 10 Douzaine Representatives, 2 Representatives of the States of Alderney, and HM Procureur and HM Comptroller.

23. The People's Deputies are elected by universal adult suffrage. The States of Deliberation sits for a term of four years after which there is a general election. The Douzaine Representatives are nominated by the 10 Douzaines or Parish Councils of the Island and serve for one year.

24 The States of Deliberation (hereinafter referred to as "the States") exercises executive or administrative functions through Committees, every one of which is answerable to the States and in the States for its acts. The Committees are established by the States by resolution with specific mandates or are constituted by legislation with statutory powers and duties. They administer the various functions of government in Guernsey, such as finance, civil service, agriculture, administration, health, education, housing, horticulture, tourism, employment, telecommunications, electricity, water, law and order, postal services and town and country planning. The States over a period of time have constructed a permanent civil service under the immediate control and direction of Committees of the States. In Guernsey, therefore, the civil service derives its authority from the States and not from the Crown as in the United Kingdom.

25. The States meets monthly to consider proposals placed before it from its Committees. These proposals will range from economic and fiscal policy to initiating and approving proposed legislation, as well as various items of expenditure. However, in the decisions taken by the States, no States can bind a future States, and as there is nothing in Guernsey equivalent to Cabinet Government, no Committee of the States can force the States to adopt any particular measure however important it may be. Party politics do not exist in Guernsey, consequently the legislative process demands a fair degree of consensus from independent members of the States if a proposed measure is to be approved.

26. The States Advisory and Finance Committee is regarded as the senior committee and is mandated to examine all proposals and reports which are to be placed before the States for deliberation. The elected States Committees are supported by a professional civil service of some 1,800 staff. Each States Committee has a Chief Officer (or Chief Executive). The States Supervisor is Head of the Guernsey Civil Service and Chief Officer of the States Advisory and

Finance Committee. The Committees also directly employ approximately 3,000 non-civil service staff which includes manual workers (1,300), nurses (760), teachers (550), police officers (150) and customs officers (70).

Alderney

27. The States of Alderney is the legislative assembly for Alderney and derives its authority and powers from the Government of Alderney Law, 1987. The States comprise the President of Alderney, who is the civic head and representative of the Island, is elected by universal suffrage and holds office for four years; and 10 Members who are also elected by universal adult suffrage for a period of four years. Except for those services legislated for and administered by the States of Guernsey, the remaining functions of government in Alderney are administered by Committees of the States. The system of government in Alderney is closely modelled upon that of Guernsey, and is supported by a small civil service. The States of Guernsey, however, may legislate for Alderney in any matter with the consent of the States of Alderney, and in criminal matters without the consent of the States of Alderney. In recognition of the responsibilities for Alderney that are exercised by the States of Guernsey (see para. 19), Alderney is represented by two members in the States of Deliberation.

Sark

28. The Chief Pleas of Sark is the legislative assembly for Sark and derives its authority and powers from the Reform (Sark) Law, 1951. It comprises:

(i) The Seigneur of Sark;

(ii) The Seneschal;

(iii) The 40 tenants of Sark who together with the Seigneur and a few owners of freehold property, are the sole owners of all land on Sark; and

(iv) Twelve Deputies elected by universal adult suffrage for a period of three years.

29. The Seigneur of Sark is the civic head and representative of the Island. The office is hereditary. The Seneschal, however, is the ex officio President of the Chief Pleas, and is appointed by the Seigneur with the approval of the Lieutenant-Governor of the Bailiwick.

30. The Chief Pleas of Sark meets three times a year and administers the functions of government in a manner very similar to the States of Guernsey and the States of Alderney. As with Alderney, the States of Guernsey may legislate for Sark in criminal matters without the agreement of the Chief Pleas, but on any other matter only with the prior agreement of the Chief Pleas.

Question Time

31. As the time of the States of Guernsey is devoted mainly to public business when it meets on a monthly basis, then the best means of eliciting information (to which members might not

otherwise have access) about the intentions or practice of Committees of the States, is by the use of Question Time. Rules of Procedure allow any member of the States, with prior notice, to have questions answered verbally by the President of the Committee concerned before the commencement of official business at the meeting of the States. Alternatively, questions can be dealt with in writing, the written replies being circulated to all members of the States and to the media.

B. The law

32. The judiciary in the Bailiwick is entirely independent of the Government and is not subject to direction or control by either the States of Guernsey, the States of Alderney or the Chief Pleas of Sark. The Bailiff of Guernsey is the President of both the Royal Court and the Court of Appeal. The Bailiff is the sole judge of law in the Royal Court.

33. HM Procureur and HM Comptroller are the Bailiwick's principal advisers on Bailiwick law and represent the Crown in all criminal proceedings. HM Procureur, and to a lesser extent HM Comptroller, are responsible for enforcing the criminal law, and for criminal proceedings which are brought by and in the name of the Law Officers of the Crown. Guernsey has its own police force which is under the general direction of the Committee for Home Affairs of the States of Guernsey, and which is modelled upon the police force in the United Kingdom. From time to time the Guernsey police force will be asked to assist in matters of law and order in the smaller islands of Alderney and Sark. The police force is subject to periodic inspection by HM Inspector of Constabulary.

34. The administration of all Guernsey courts is the responsibility of the Bailiff, whilst in Alderney it is the responsibility of the Chairman of the Court of Alderney, and in Sark it is the responsibility of the Seneschal.

The courts

35. The judicature of Guernsey is divided into three parts, namely, the Court of Appeal, the Royal Court and the Magistrate's Court. In addition there is an Ecclesiastical Court of great antiquity. In Alderney there is the Court of Alderney, and in Sark the Court of the Seneschal.

The Court of Appeal

36. The Guernsey Court of Appeal was constituted by the Court of Appeal (Guernsey) Law, 1961, and has both civil and criminal jurisdiction in accordance with the provisions of that Law. It may be distinguished by the addition of the words "Civil Division" or "Criminal Division" according to the jurisdiction that is being exercised.

37. The Bailiff is ex officio a judge of the Court of Appeal and a President of the Court. He is precluded from sitting in the Court of Appeal in any case in which he presided in the lower courts. The other judges (called ordinary judges) are appointed by the Crown and will normally comprise eminent Queen's Counsel practising at the bar in England and Wales, Scotland and Northern Ireland as well as the Bailiff of Jersey. The Court of Appeal is duly constituted if it consists of an uneven number of judges, but not less than three.

38. In civil matters appeals lie to the Court of Appeal from decisions of the Royal Court sitting as an Ordinary Court and from decisions of the Matrimonial Causes Division of the Royal Court, but limitations on appeals in relation to certain decisions of the Courts are clearly specified in the Court of Appeal (Guernsey) Law, 1961.

39. In criminal matters a person convicted on indictment or summarily convicted in the Royal Court sitting as a Full Court may appeal to the Court of Appeal against his conviction on a question of law alone; or in certain circumstances on a question of fact alone, or on a question of mixed law and fact; or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal; and with the leave of the Court of Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law. The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1998 also provides a right of appeal in criminal cases on a point of law from the Magistrate's Court to the Court of Appeal.

40. In civil matters no appeal lies to Her Majesty in Council from a decision of the Court of Appeal without the special leave of Her Majesty in Council or the leave of the Court of Appeal except where the value of the matter in dispute is equal to or exceeds £500. Any such appeal is heard by the Judicial Committee of the Privy Council which is the supreme court of appeal for the Bailiwick.

41. In criminal matters appeals lie to Her Majesty in Council from decisions of the Court of Appeal, and nothing in the Court of Appeal (Guernsey) Law, 1961, affects the Crown's prerogative of mercy.

The Royal Court

42. The Royal Court administers both the civil and the criminal law in Guernsey. It sits as:

(i) A Court of Chief Pleas; or

(ii) A Full Court; or

(iii) An Ordinary Court; or

(iv) A Court of Matrimonial Causes.

43. The Royal Court is presided over by the Bailiff or Deputy Bailiff and comprises the Bailiff or Deputy Bailiff and 12 Jurats. The Bailiff or Deputy Bailiff are sole judges of law in the Royal Court and as such are advocates by profession. The office of Jurat is of great antiquity and is somewhat similar to that of justice of the peace in the United Kingdom.

44. The Royal Court sitting as a Court of Chief Pleas comprises the Bailiff or Deputy Bailiff and at least seven Jurats. The Court sits three times a year when the Seigneurs of Fiefs who owe homage direct to the Crown, the Advocates, and the Constables of the 10 parishes must appear and answer in person when the Roll is called. The Court also receives and considers certain

reports presented to it by the authorities concerned under a statutory duty, for example, on the condition of the water courses of the Island, or presented to it at the specific request of the Court, for example, on licensed public halls.

45. The Royal Court sitting as a Full Court comprises the Bailiff or Deputy Bailiff and not less than seven Jurats. The Full Court does not have original jurisdiction in civil matters, but it does deal with applications for liquor licences and with appeals from decisions of States Committees. The Full Court has original jurisdiction in criminal matters:

(a) In respect of all indictable offences committed anywhere in the Bailiwick;

(b) Where the Guernsey Magistrate's Court considers that an offence is outside its competence to try, or that the appropriate punishment would exceed that which the Court could impose;

(c) Where the Ordinary Court is of a similar view in respect of an offence referred to it by the Court of Alderney or Sark;

(d) Where a person charged with an offence for which he can be imprisoned for more than three months (other than an assault) elects trial by the Full Court.

46. The Royal Court sitting as a Full Court also has appellate jurisdiction in criminal matters. A person has a right of appeal to the Full Court against conviction or sentence on conviction or both by the Magistrate's Court or the Ordinary Court unless appeal is specifically precluded by law. The prosecution also has a right of appeal to the Full Court against the acquittal of any person by the Magistrate's Court or the Ordinary Court. Except in the case of acquittals, all decisions in criminal matters of the Court of Alderney and the Court of the Seneschal of Sark are subject to appeal to the Full Court.

47. The Royal Court sitting as an Ordinary Court comprises the Bailiff or the Deputy Bailiff or a Lieutenant-Bailiff and at least two Jurats. The Ordinary Court has original jurisdiction as regards all civil suits commenced in Guernsey, including those emanating from a Clameur de Haro (see para. 62 below), and deals with a wide variety of non-contentious matters including conveyancing of property, registration of Wills of Realty, Patents, Designs and Trade marks, Memoranda and Articles of Association of Limited Liability Companies, and the appointment of guardians of the person and property of minors and of persons of unsound mind and prodigals.

48. There is a right of appeal to the Ordinary Court from the determination of the Magistrate's Court in most civil actions. In addition, decisions of the Court of Alderney and the Court of the Seneschal in Sark in civil matters are subject to appeal to the Ordinary Court. Whilst the Ordinary Court has no appellate jurisdiction in criminal matters, it does have certain original jurisdiction in criminal matters relating to Alderney and Sark when it is considered that a particular offence or the punishment appropriate to it is considered to be outside its competence either by the Court of Alderney or by the Court of the Seneschal of Sark.

49. The Matrimonial Causes Division of the Royal Court was set up under the terms of the Matrimonial Causes (Guernsey) Law, 1939, and comprises the Bailiff or Deputy Bailiff and four Jurats or the Bailiff or Deputy Bailiff sitting alone. Alternatively, the Royal Court has power to appoint a person of at least 10 years' standing at the Bar in Guernsey, England, Scotland, Northern Ireland or Jersey as a Commissioner of the Royal Court with power to exercise the function and jurisdiction of the Court concurrently with the Matrimonial Causes Division.

50. Subject to certain exceptions, the Court has original jurisdiction in respect of all suits for divorce, judicial separation or nullity of marriage; applications for decrees of presumption of death and dissolution of marriage thereupon; and all other causes, suits and matrimonial matters under the Matrimonial Causes (Guernsey) Law, 1939. The Court also has appellate jurisdiction in respect of suits for judicial separation and related matters originating in the Court of Alderney or in the Court of the Seneschal of Sark.

The Magistrate's Court

51. The Magistrate's Court is presided over by a Magistrate or a Jurat as an Acting Magistrate, and has summary jurisdiction in criminal matters and in civil suits where the amount claimed does not exceed £2,500. There is an appeal from the Magistrate's Court to the Full Court of the Royal Court in criminal matters and to the Ordinary Court in civil matters (see also para. 39). A Magistrate may also act as Coroner, but only at the instance of the Law Officers.

The Ecclesiastical Court

52. The Ecclesiastical Court is made up of the Judge, who is the Dean of Guernsey and Commissary of the Bishop of Winchester, and his nine assessors, who are the rectors of the other Parishes in Guernsey. In addition to ecclesiastical business of various kinds the Court grants probate of wills and letters of administration in relation to personal estate, and has jurisdiction to decide upon the disposal of movables belonging to a suicide.

The Court of Alderney

53. The Court of Alderney comprises not less than three Jurats from among the Jurats in Alderney appointed by the Home Secretary of the United Kingdom Government. One of the Jurats is designated by the Home Secretary as Chairman of the Court. The Court has unlimited original jurisdiction in civil matters arising in Alderney. Judgements of the Court in civil matters are subject to a right of appeal to the Royal Court of Guernsey sitting as an Ordinary Court.

54. In criminal matters, except in certain cases, the Court has original jurisdiction by virtue of the 1987 Law to impose fines not exceeding £2,000 or imprisonment for periods not exceeding three months or both, although if more than one sentence is passed the aggregate of the fines is currently £4,000. There is a right of appeal in these criminal matters to the Royal Court of Guernsey sitting as a Full Court. Original jurisdiction in respect of all other criminal matters in Alderney, however, rests with the Royal Court of Guernsey sitting as an Ordinary Court.

The Court of the Seneschal in Sark

55. The Court of the Seneschal is presided over by the Seneschal. The Court has unlimited original jurisdiction in civil matters with a right of appeal against its judgements to the Royal Court of Guernsey sitting as an Ordinary Court.

56. In criminal matters, the Court has original jurisdiction to impose fines not exceeding £1,000 or imprisonment for periods not exceeding one month or both, although if more than one sentence is passed the aggregate of the fines is currently £2,000. There is a right of appeal in these criminal matters to the Royal Court of Guernsey sitting as a Full Court. Original jurisdiction in respect of all other criminal matters in Sark, however, rests with the Royal Court of Guernsey sitting as an Ordinary Court.

Trial

57. The Criminal Law and Procedure in the Bailiwick is generally similar to that of England and Wales. Criminal trials take the form of a contest between the prosecution and the defence. Since the law presumes the innocence of an accused person until guilt has been proved, the prosecution is not granted any advantage, apparent or real, over the defence. A defendant has the right to employ legal counsel or in the case of a Royal Court trial to have legal counsel assigned to him/her, and if remanded in custody the person may be visited by legal counsel to ensure a properly prepared defence.

58. Criminal trials are normally in open court and rules of evidence concerned with the proof of facts are rigorously applied. If evidence is improperly admitted, a conviction can be quashed on appeal. During the trial the defendant has the right to hear and cross-examine witnesses for the prosecution, normally through a lawyer; to call his or her own witnesses who, if they will not attend voluntarily, may be legally compelled to attend; and to address the court in person or through a lawyer. The defendant cannot be questioned without consenting to be sworn as a witness in his or her own defence. When he or she does testify, cross-examination about character or other conduct may be made only in exceptional circumstances; generally the prosecution may not introduce such evidence.

59. The jury system does not operate in the Bailiwick. When a trial is held in the Royal Court the case is heard before the Bailiff or Deputy Bailiff and at least seven Jurats. The Bailiff, as President of the Court, is the sole judge on questions of law and procedure, sums up the evidence for the Jurats and instructs them on the relevant law. The Jurats decide whether the defendant is guilty or not guilty and determine sentences, but it is the Bailiff who announces them. The verdict may be reached by a simple majority. If the Jurats return a verdict of "not guilty" the prosecution has no right of appeal and the defendant cannot be tried again for the same offence. In the event of a "guilty" verdict, the defendant has a right of appeal to the Court of Appeal.

Coroner's Court

60. In Guernsey the Magistrate or Acting Magistrate may act as Coroner, but only at the instance of the Law Officers. Coroners investigate violent and unnatural deaths or sudden deaths where the cause is unknown. If a death is sudden and the cause unknown, however, an inquest may not be necessary if after a post-mortem examination has been made the Law Officers are satisfied that the death was due to natural causes. Where the Law Officers have reason to believe that the deceased died a violent or unnatural death or died in prison or in other specified circumstances they will cause the Magistrate, acting as Coroner, to hold an inquest, and it is the duty of the Coroner's Court to establish how, when and where the deceased died. The Coroner sits alone to hear the case.

The civil law

61. The common law in the Bailiwick derives from the customary law of Normandy. However, in recent times the law in Guernsey has become more and more anglicized. Statute law is enacted in English and is frequently derived from the comparable statute law of England. The significance of the Norman customary law has declined and the English common law, which is only persuasive authority, is increasingly applied where the custom is irrelevant or non-existent. Nevertheless, the customary law of Normandy still has great significance in relation to the law of real property and inheritance in Guernsey. The sources of legislation in the Bailiwick are:

(i) Laws passed by the States of Deliberation, the States of Alderney or the Chief Pleas of Sark, which obtain the Sanction of Her Majesty in Council;

(ii) Regulations and Orders made under the provisions of the laws passed in the above manner;

(iii) Ordinances passed by the States of Deliberation, the States of Alderney or the Chief Pleas of Sark;

(iv) Acts of the United Kingdom Parliament and statutory instruments made thereunder as extended by Order in Council with the consent of the States of Deliberation, the States of Alderney and the Chief Pleas of Sark;

(v) Acts of the United Kingdom Parliament that are expressly applied to the Bailiwick.

(vi) Regulations of the European Community applicable under Protocol 3 - although it is normally necessary to enact local legislation to provide penalties and enforcement.

Relevant judicial decisions also form a source of law in the Bailiwick. Where no clear precedent can be drawn from Bailiwick law, the courts in the Bailiwick generally have regard to the laws of Normandy and the laws of England when deciding the cases before them.

62. The Clameur de Haro is an ancient Norman legal device by which a complainant can obtain an injunction to prevent damage to his or her property following which civil action may or may not ensue. The procedure involves the complainant, within the presence of a witness, kneeling on the affected property and in French calling upon his or her Prince or Lord to come to his or her aid and then reciting, also in French, the Lord's Prayer. The Clameur de Haro must then be declared to the Bailiff and registered at the Greffe office within 24 hours. This has the effect of immediate cessation of all the activity which it is alleged is damaging the complainant's property. A person who raises the Clameur de Haro must, within a year and a day of having done so, institute civil proceedings through the Royal Court sitting as an Ordinary Court. The defendant, should he or she consider himself or herself to have been unfairly treated, may also institute civil proceedings through the Royal Court as a person raising the Clameur de Haro falsely may be liable in damages.

63. Injunctions may be granted under modern legislative provisions and also customary powers.

Advocates of the Royal Court

64. The practitioners of law in the Bailiwick are known as Advocates of the Royal Court of Guernsey. Before a person may be admitted to the Guernsey Bar as an Advocate of the Royal Court, he is required to have been ordinarily resident in the Bailiwick of Guernsey for at least three years after attaining the age of 16 years and to:

(1) (a) Be a member of the Bar of England and Wales, of the Bar of Northern Ireland, or of the Faculty of Advocates in Scotland; or

(b) Be a Solicitor of the Supreme Court of England and Wales, of the Supreme Court of Judicature of Northern Ireland, or in Scotland;

and

(2) Hold either

(a) A diploma stating that he is "Bachelier" of one of the Faculties of Law in France; or

(b) A "Certificat d'Études Juridiques Françaises et Normandes" from Caen University;

and

(3) Have undertaken pupillage in Guernsey whilst accredited to an Advocate of the Royal Court of at least five years' standing,

(a) In the case of a member of the Bar of England and Wales, the Bar of Northern Ireland, or the Faculty of Advocates in Scotland, who is unable to satisfy the Royal Court that he has completed at least six months' pupillage within the jurisdiction concerned, for a period of not less than 12 months, or

(b) in any other case, for a period of not less than six months;

and

(4) Have passed an examination conducted by a committee under the authority of the Royal Court.

An Advocate in the Bailiwick combines the functions of an English barrister and an English solicitor. Although any lawyer may practise in the Bailiwick, only an Advocate of the Royal Court has the right to plead in the Courts in Guernsey, Alderney and Sark, and to advise on local law within the Bailiwick.

Administrative tribunals

65. Guernsey has adopted a system of tribunals which exercise judicial functions separate from the courts. Generally the tribunals are set up under statutory powers which govern their constitution, functions and procedure. Compared with courts, they tend to be more accessible, less formal and less expensive. They also have expert knowledge in their particular jurisdictions.

66. The introduction of the tribunal system in the Bailiwick has been comparatively recent. Independent of the Government, tribunals rule on disputes between private citizens - for example, the industrial disputes tribunal has a major part to play in employment disputes. That concerned with social security resolves claims by private citizens against the public authority concerned, whilst the tax tribunal decides disputes by the public authority concerned against private citizens. Tribunal decisions may either be binding upon the public authority concerned or be in the form of recommendations.

67. Tribunal members are appointed from panels of independent persons established after consultation either by the Royal Court of Guernsey, or the Advisory and Finance Committee of the States, or in the case of industrial disputes by the Industrial Disputes Officer, or in a manner specified by law.

68. Another form of tribunal known as an administrative decision Review Board hears complaints by private citizens against areas of government administration where there is no right of appeal or reference to a court of law. The membership of each Review Board is determined on an ad hoc basis. The Board comprises States members who must not be members of the Committee whose decision are the subject of the appeal or who do not have any other conflicts of interest. The Deans of the Douzaines may also be members of Review Boards.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Authorities having jurisdiction affecting human rights

69. The following conventions have been ratified on behalf of the Bailiwick:

(i) European Convention for the Protection of Human Rights and Fundamental Freedoms;

(ii) International Covenant on Civil and Political Rights;

(iii) International Covenant on Economic, Social and Political Rights;

(iv) International Convention on the Elimination of All Forms of Racial Discrimination.

Under the constitution of the Bailiwick, as well as its constitutional relationship with the United Kingdom, the possession of rights and freedoms is an inherent part of being a member of such a society. They can only be restricted by a democratic decision of the States or ultimately by Her Majesty in Council. The role of the States, therefore, is not to confer rights, but rather to balance the needs of society against those of the individual. The mechanisms and legal safeguards through which human rights in the Bailiwick are protected are set out in the following paragraphs.

Legal aid

70. Whilst legal aid in the manner operated in the United Kingdom is not available in the Bailiwick to persons in need of legal advice or legal representation in court, nevertheless certain limited forms of legal aid are available in appropriate cases. Proposals for a more comprehensive scheme of civil and criminal legal aid are being formulated and it is anticipated that they will be in force in 2001.

Compensation for wrongful conviction/detention

71. There is no statutory provision in the Bailiwick for the payment of compensation to persons who have suffered wrongful conviction or detention. However, complainants may sue for damages as a civil action through the civil courts in the islands.

Compensation for victims of crime or accident

72. Statutory provision for the payment of compensation in respect of damages to the victims of crime or to families of persons whose death was caused by an accident, is available through:

(i) The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990; and

(ii) Loi relative à la Compensation qui pourra être accordée aux Familles de Personnes dont la Mort a été causée par Accident, 1900, as amended by the Fatal Accidents (Guernsey) Law, 1960 and by the Fatal Accidents and Law Reform (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 1965.

73. With regard to the victims of crime the courts in the Bailiwick may order an offender, upon conviction, to pay the victim for personal injury, loss or damage (including terror and distress directly occasioned by the commission of the offence) resulting from that offence or any offence which is taken into consideration by the court in determining sentence. Where a court makes a compensation order against an offender under 17 years of age at the time of the offence it may, and shall if the offender is under 14 years of age, order that the compensation be paid by the father, the mother or the guardian of the offender. Compensation for a victim must come ahead of a fine if the court is considering both, and the recovery of amounts awarded in compensation must be put ahead of the recovery of fines. In addition, victims of crimes of violence are entitled to pursue civil law for damages in tort. Proposals for a comprehensive compensation scheme are being formulated and it is anticipated that they will be in force in 2001.

74. With regard to the family of a person whose death was caused by an accident, the courts may make a compensation order against a person should it be concluded that either his fault, or his negligence, or his incompetence, or his incapacity could have caused the death of the person concerned.

B. Incorporation of human rights instruments in national legislation

75. The Bailiwick does not comprise a sovereign State, but is a Crown Dependency. Under international law Her Majesty's Government is responsible for the Bailiwick's international relations. The position of the Bailiwick in relation to international agreements entered into by Her Majesty's Government is a matter to be determined by the agreement itself. It is accepted practice for the Bailiwick authorities to be notified and consulted before an international agreement is ratified on behalf of, or is extended to, the Bailiwick.

76. With one exception, noted below, treaties and conventions are not incorporated directly in local legislation. Instead, if any change in the law is needed to enable the Bailiwick to comply with a treaty or convention, the relevant department of the States will introduce a Projet de Loi designed to give effect to the relevant articles of the treaty or convention. The Projet de Loi is then subject to the normal procedures for passage through the States and the Privy Council for sanction by Her Majesty in Council.

77. Incorporation into domestic legislation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights has not been ruled out, but the Bailiwick authorities wish to ensure (as does the United Kingdom) that they do not over-commit themselves and thereby jeopardize the successful incorporation of the European Convention on Human Rights and Fundamental Freedoms. However, incorporation of the European Convention will ensure that corresponding Covenant rights are directly enforceable in insular courts, and that public servants will have to act consistently with them.

C. Enforcement by courts of human rights instruments

78. Courts in the Bailiwick interpret only those laws made by the States or Acts of Parliament which have been extended to the Bailiwick. However, when interpreting local laws in relation to human rights the courts will have regard to relevant provisions of applicable human rights instruments.

D. Domestic machinery for implementation of human rights

79. It has not always been found necessary to translate human rights instruments into local legislation as society and the democratic form of government in the Bailiwick is such that certain basic rights and freedoms are found to be naturally in place. Everyone residing in the Bailiwick is regarded as equal before the law, and as the population is not a multi-racial society, racial discrimination has not become a problem. A buoyant economy and generally relatively full employment provide for an efficient society with a good standard of living. As the Bailiwick is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, individuals residing in the Bailiwick have the right to petition the European Court of Human Rights at Strasbourg. Legislation is currently being enacted which will incorporate the European Convention into domestic legislation.

Data protection

80. The Bailiwick authorities have shared the general concern since the early 1970s about the growing power to use computers to collect and redistribute information about individuals. The Data Protection (Bailiwick of Guernsey) Law, 1986, applied safeguards to the handling of personal data on computer, which in turn enabled the provisions of the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data to be extended to the Bailiwick. Proposals have been laid for the introduction of legislation compatible with the European Parliament and Council Directive 95/46/EC and the appointment of an independent Data Protection Commissioner is imminent.

81. The 1986 Law requires that personal data should be processed fairly and lawfully, used only for specified purposes and subject to proper security. Those who wish to process data must (with some exceptions) register with the local Data Protection Registrar, who has powers to enforce compliance with the legislation. Although the legislation and the parent Convention are concerned with data protection, they are also designed to facilitate the flow of data. Safeguards are provided, however, so striking a balance between the right to know and individual privacy by regulating the disclosure of data to those third parties who are registered as disclosees.

Compliance against the police and prison officers

82. The Police Complaints Authority which operates in the United Kingdom has no jurisdiction in the Bailiwick. However, the Guernsey Police Force has adopted as a Code of Practice, the Home Office document entitled "Guidance to Chief Officers on police complaints and discipline procedures". This sets out clear procedures for the receipt and investigation of complaints against the conduct of the police.

83. In addition, as a safeguard, the complaints procedure is regularly inspected by Her Majesty's Inspector of Constabulary during his inspection of the Island Police Force. The Complaints Register is also periodically laid before the Committee for Home Affairs for inspection.

84. Should a complainant be dissatisfied with the outcome of a complaint investigated by the police, the Complaints Register is endorsed accordingly. At that point the complainant, or indeed any person who at any time is dissatisfied generally with the conduct of the police, has the right to make representation to the Committee for Home Affairs.

85. However, all complaints which allege acts of criminality by the police, such as the use of unreasonable force to achieve an arrest, are referred to the Law Officers of the Crown.

86. Complaints against the conduct of prison officers concerning persons detained in the Guernsey Prison are subject to established procedures, whereby complaints may be submitted to the Prison Governor, any member of the Committee for Home Affairs or any member of the Panel of Prison Visitors. All complaints have to be recorded and are thoroughly investigated. In addition, a prisoner has the right at any time to submit a written petition to the Committee for Home Affairs, which also must be recorded and dealt with.

IV. PUBLICATION AND PUBLICITY

87. All legislation of the States, Billets d'Etat and relevant official documents are retained for public inspection and purchase at the official records office of the Bailiwick, namely the Greffe Office. The Official Journals of the European Union are available for public inspection through the Islands Archives Service.

88. The Bailiwick's reports to the bodies established under the various United Nations human rights instruments to monitor State party compliance with treaty obligations are prepared by the States of Guernsey, drawing on such information as may be available from government departments and copies of the reports are made available to the general public through government departments, the Citizens' Advice Bureau and public libraries.